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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 402

JOSEPH F. LUCKE,

Petitioner,

vs.

RUSSELL S. DAVIS, Commissioner of Personnel of the State of Maryland

and

THE MUNICIPAL COURT OF BALTIMORE CITY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in the within case on April 7, 1967, rehearing denied May 1, 1967, Mandate issued (judgment final) May 8, 1967, dismissing the appeal from a judgment of the Baltimore City Court, in which that latter tribunal, in turn, had affirmed the action of the state Commissioner of Personnel in dismissing the Petitioner from his job as a state employee in the Traffic Court Clerk's office, for exercising his right of Free Speech by mailing critical and satirical communications to the chief administrative officer under whom he was employed, and for publishing a political cartoon.

CITATIONS TO OPINIONS BELOW

The Per Curiam Opinion of the Court of Appeals of Maryland dismissing the appeal is reported at 245 Md. 706, 228 A2d 313. This Opinion is appended hereto as Appendix A. The Opinion of the Baltimore City Court affirming the Commissioner of Personnel, appears in the record as printed for the use of the Court below, at pp. E. 1-E. 19 (of "Appellant's Appendix") and the "Order" and "Supplemental Order" of the Commissioner (which are construed as his "opinions" under Rule 23(i) of this Court) appear at pp. E. 26-E. 38 of the same record, printed for the use of the Court below.

GROUNDS FOR INVOKING JURISDICTION OF THIS COURT

Date of Judgment and Entry of Same

The judgment of the Court below is appended hereto in "Appendix B." It is dated April 7, 1967 and was filed (entered) the same day.

Motion for Rehearing Denied, and Mandate

On May 1, 1967 the Petitioner's Motion for Reargument (before the Court of Appeals of Maryland) was denied. The notation appears in "Appendix B" hereof, page App. 7, as does the Court's Mandate (judgment final), dated May 8, 1967.

Jurisdiction

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Sec. 1257 (3), there having been drawn in question below, and the Petitioner claiming here, denial of rights, privileges and immunities secured by the First and Fourteenth Amendments to the United States Constitution, and there having been drawn in question a

state statute, as applied (in a manner allowing suppression of Free Speech), on the ground of its being administered in a manner making it repugnant to the Constitution of the United States.

QUESTIONS PRESENTED FOR REVIEW

1. In light of the result reached by this Court in *Thorpe* v. *Housing Authority of the City of Durham* (April 7, 1967) 35 LW 4366, 385 U.S. ——, 87A S. Ct. ——, setting forth restrictions on permissible action by government even when acting in what is ordinarily a private capacity, was it constitutionally valid for the State of Maryland to discharge the Petitioner from his clerical job because he had exercised his right of Free Speech, by sending to the chief administrative officer of his department, letters critical, but not scurrilous, and not disloyal, concerning operation of the department in which he worked; which letters were, in fact, directed toward the improvement of the public service and public reputation of the department?

The state, in its administration of the state civil service law, assumed throughout all of the proceedings that it need not apply First Amendment Free Speech principles to its adjudication of personnel matters; was this an error under the First and Fourteenth Amendments?

2. Did the Court of Appeals of Maryland deny the Petitioner Due Process of Law by disposing of his case below by the application of that species of "novelty in procedural requirements" which this Court has held repeatedly, and as late as *Wright* v *State of Alabama* 83 S. Ct. 1244, 373 U.S. 289 "cannot be permitted to thwart review"; the novel procedural requirement in this instance being the allowance of a collateral attack on the

validity of a docket entry, in complete opposition to prior law on the subject?

CONSTITUTIONAL PROVISIONS, STATUTES AND ADMINISTRATIVE RULES INVOLVED

The case involves the following:

1. A portion of the Fourteenth Amendment to the Constitution of the United States, making the First Amendment applicable to the States:

> ". . . No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. A portion of the First Amendment:

> "Congress shall make no law . . . abridging the freedom of speech. . .

3. A portion of Article 64-A, "Merit System," sec. 33 of the Laws of Maryland (Michie, 1957):

> "An employee may be permanently separated from the classified service through . . . removal. . . .
>
> "No employee who has completed his probation may be permanently removed . . . except for cause. . . .
>
> "The Commissioner shall, by rule, prescribe what may constitute cause for removal, but no removal shall be allowed because of religious or political opinions or affiliations of any employee."

Sec. 44:

"This article [has as] . . . its purpose . . . to provide adequate means for the prompt removal from positions . . . of all persons . . . who may be indolent, incompetent, inefficient, or otherwise unfit. . . ." (This and the foregoing "religious or political opinions" limitations are the only removal limitations present in the statute.)

4. Rules 46 and 47 of the Commissioner of Personnel. (At p. E. 16 Appellant's Appendix, the lower court refers to Rule 47.):

Rule 46—

"[An employee may be suspended without pay] on account of misconduct, negligence, inefficiency, insubordination, disloyalty, or other reason satisfactory to the Commissioner."

Rule 47 sets forth fourteen specific causes for removal as well as a provision that "removal may be for causes other than those enumerated."

Rules 45, 46 and 47 are set forth in their entirety in Appendix C.

5. Maryland Rules of Procedure (Vol. 9B Annotated Code of Maryland (Michie, 1957)):

Rule 564:

"b. Judgment Nisi

"1. As Directed by the Court. "Where an action at law is tried upon the facts by the Court, the Court shall direct judgment *nisi* to be entered upon the law and the evidence.

"e. If a motion for new trial be not made, within the time prescribed by section a of this Rule, the Clerk shall enter a final judgment (judgment "absolute") as of course."

STATEMENT OF THE CASE

First Amendment

The Municipal Court of Baltimore City is the lowest level court in that city, serving, in essence, the functions of a magistrate's court, including lower-level criminal and traffic jurisdiction.

The chief administrative officer of the system, having sway over the office staff, the Clerk's staff, the stengraphers, and employees, is also the chief magisterial officer, and is called Chief Judge.

On July 17, the Appellant was suspended from his duties as a clerical worker in this court. The Commissioner of Personnel found that "a number of anonymous communications were placed in the record" (E. 30). The Commissioner further stated that he was "convinced the Respondent wrote these letters" (E. 30). This the Petitioner (the "Respondent" referred to) strenuously, and at very great personal expense denied having done. (The "Petition" in the Record below refers to an expenditure of $787 *just* to have the testimony transcribed and there were many hearings, days of testimony and three appeals). But findings of *fact,* of an administrative agency, are, to all and every intent and practical purpose, irrefutable, and this finding of *authorship* was not disputed in the Court below, and will not be disputed here. That is, it is not admitted, but it is not, for the purposes of this Petition, disputed.

The Commissioner also found, that "all" of the communications in question "were of an offensive nature"

(E. 30 "Appellant's Appendix"), and that, as a matter of law, these communications "reflected[ed] upon the loyalty of the [Petitioner] and they show . . . complete disrespect. . .".

It is disputed that this ruling of law was correct, and it is disputed that as a matter of law, the Appellant could be fired by a *government* agency for the sending of such communications, regardless of what a private employer could do, simply because the Constitution *prohibits* a state from abridging Free Speech by either the passage, or *administrative interpretation* of any law.

The ruling was upheld in the first appeal step (to the Baltimore City Court) and would have been affirmed again by the Court of Appeals of Maryland, that court said, if it had reached the question.

The communications involved were none of them obscene, vulgar, unrelated to Court business, dirty, unless use of the word "hell" is dirty, nor, it is submitted, either "scurrilous" or even "disloyal"—if that were, as a matter of law, a valid ground for dismissal. (See Argument, below).

Those on which the Baltimore City Court based its affirmance, were these:

1. (E. 5) (MUN CT #1) A notification to the Chief Judge in his capacity as administrative chief that the Chief Clerk played favorites.

2. (E. 5) (MUN CT #2) An envelope expressing the opinion that the Chief Judge, in his capacity as administrative chief, was taking a back seat to his Chief Clerk in administrative matters.

3. (E. 5) (MUN CT #4) A complaint concerning use of the Court teletype machine for transaction of private business.

4. (E. 6) (MUN CT #5) The claimed absence, because of lack of sobriety, of a public clerk-employee is reported.

5. (E. 6) (MUN CT #8) A report on public indignation, registered by incoming phone calls, and on confusion in the office, caused by the administrative decision to serve thousands of warrants, by mail, at one time.

6. (E. 6) (MUN CT #9) The suggestion that incompetence of the Chief Clerk may cause difficulties and entanglements to the Chief Judge.

7. (E. 6) (MUN CT #11) A "tip" that the Court's teletype machines were being further used for private business, and also that the reports thereby obtained are in some instances being sold.

8. (E. 7) A card suggesting that the Court is acquiring a bad reputation through the comportment of some of its members and members of the office staff, and more particularly, that high employee turnover is due to the Chief Clerk's methods, including the method of seeming to make the administrative chief his junior.

9. A political cartoon attributed to the Petitioner.

The Maryland Court stated

"We . . . have carefully reviewed the merits of the appellant's contentions, and were it necessary, we would rule that his dismissal was legally justified." (Last sentence of Opinion.)

Hoist by the Clerk's Petard

But this statement was merely in the nature of insurance, for the Court, actually, refused to reach the substantive question, having hoisted Petitioner out of court on the Baltimore City Court Clerk's petard, in the following manner:

At the close of the case in the Baltimore City Court, the Court Clerk made the following entry in the court docket:

> "3/29/66, Judgment *nisi* in favor of appellees (defendants). (Opinion of Court, 228 Atl. 2d at 314. App. A hereof, p. App. 4).

On the third day thereafter, as directed by the Maryland Rules of Procedure, the Clerk made the following entry:

> "4/1/66, Judgment made absolute in favor of the appellees (defendants), for costs of suit." (Opinion, 228 A2d at 314. App. A hereof, p. App. 4).

In this, the Clerk was following the Maryland Rules of Procedure (Vol. 9B Maryland Code (1957) Rule 564 b. 1. and Rule 567 e.)

However *the Clerk was in error,* and the Petitioner did not know he was in error, but instead, for his guidance, consulted and relied on the Clerk's docket entry. Doing so, he filed his appeal to the Maryland appeals court on the last possible day *according to the docket entry.* This was done, apparently, not by laxity, but by design, so as to extend, as far as possible, the time within which the Petitioner could perfect his appeal. If the docket entry were correct, the appeal would have been timely, so the Maryland court said (Opinion, 228 A2d at 314 App. A hereof, p. App. 4).

However, the Maryland Court neatly ruled that the docket entries were not correct, that the Petitioner had relied on them at his peril, and that his appeal had therefore not been timely filed. The Petitioner was out of Court.

The Court held that the case was an Administrative Procedure Act case, that the Maryland Rules of Procedure 564b. 1. and e. did not apply, and that the Clerk's erroneous docket entry was a nullity and of the same effect as if it did not exist. The Petitioner's reliance was simply his misfortune, and the court's good fortune.

Thus, the question of Free Speech, as far as review by this Court was concerned was, it thought, sidestepped by the Maryland Court, apparently with the hoped-for result of making the decision non-reviewable, even though it was principally federal First Amendment grounds which had been pursued below.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED

First Amendment Free Speech Question

i.

Before the Administrative Body

In his "Supplemental Order," the Commissioner says that

> "During the hearing . . .
>
> "[t]hree points [were] made by the Respondent's Counsel:
>
> ". . . 3. Freedom of speech and press are given under the Constitution of the United States and no administrative rule can abridge that right." ("Appellant's Appendix," p. E. 36)

Decided as follows: (referring to "3" above)

> "The Commissioner feels this is a proper ground for dismissal of a State employee. The question of the employee's right to be critical is not involved;
>
> ". . . Such communications have no place, no sanction, and no privilege in [government] employment. It promotes the efficiency of the government service to discipline employees using these methods.'" ("Appellant's Appendix" below, p. E. 37).

ii.

On Appeal to the Lower Court
(Baltimore City Court)

The Petitioner's original pleading in the lower court alleged, as the error committed by the administrative body, the following:

> "K. Even if, which is by no means admitted, but is specifically denied, the Appellant *had* written the cartoon and anonymous communications in question, he had a right—perhaps a duty—to do so, and to criticize the public officials who were criticized; it was an abridgment of his right of free speech, not only under the federal Constitution, but under the Maryland Declaration of Rights; that further, the cartoon and communications were wholly innocuous, and only an overly-sensitive individual would have taken offense at them; that 'if judges are to be treated as "men of fortitude, able to thrive in a hardy climate" ', then 'criticism of . . . official conduct does not lose its constitutional protection merely because it is effective criticism. . .' (See *New York Times v. Sullivan* 84 S. Ct. 710, 723).

"L. Appellant was denied Freedom of Speech.

"M. Appellant was denied Due Process of Law." (Appellant's Appendix pp. E. 20-21).

Decided as follows:

"Appellant is mistaken when he says he had the right to transmit these scurrilous charges and characterizations in the manner adopted, under the protection of the First Amendment of the Federal Constitution and Article 40 of the Maryland Declaration of Rights. There is nothing stated or implied in either, as interpreted by the Supreme Court, that would give him such a right. An employee does have the right of being critical of his co-workers, his superiors and the governmental branch by which he is employed, but not in the fashion here pursued."

(Appellant's Appendix p. E. 8).

iii.

On Appeal to the Court of Appeals of Maryland (State Court of Last Resort)

The Petitioner, in his Brief before the Maryland appeals court presented for decision only two questions, and the first of these was,

"Did the firing of the Appellant under the circumstances of the case amount to an abridgment of the right of Free Speech under the First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment; as well as a violation of Article 40 of the Maryland Declaration of rights? (Appellant's Brief below, p. 2).

Decided as follows:

Not decided. (See iv below. Appeal was dismissed as having been filed out-of-time, on the basis, it is respectfully argued, of a novel application of procedural requirements in a manner prohibited by this Court in *NAACP* v *Alabama* 78 S. Ct. (163, 357 U.S. 458) and other cases.)

The Maryland Court did say, however, in passing, (in dismissing!) that,

> "[W]e have carefully reviewed the merits of the appellant's contentions, and were it necessary, we would rule that his dismissal was legally justified." (228 A2d 313, Md. App. A hereof, p. App. 6.)

Timeliness of Appeal (Raised in Maryland Court of Appeals only)

This question was raised below by the Respondents, of course, in the "Motion to Dismiss Appeal":

> "The Appellees move that this appeal be dismissed pursuant to Maryland Rule 835 b(3), since the order for appeal was not filed with the lower court within the time prescribed by Maryland Rule 812.
>
> ". . . (T)he docket entries made by the clerk were, we suggest, improper and incorrect. . ." (Motion to Dismiss Appeal, Appellee's Motion, etc., below (blue booklet) p. 1).

The Petitioner replied,

> "(T)he Appellant-who was merely attempting to extend as far as possible, the time within which he could raise funds for this expensive (by his standards)

appeal should not be penalized for accepting at face value the clerk's docket entry. . ." (Appellant's Answer to Motion. . ." below, p. 1)

And, in his Motion for Reargument, that

"The Opinion of the Court overlooks the denial of Due Process of Law, under the Fourteenth Amendment to the United States Constitution which the action of this Court amounts to, in denying the Plaintiff the right to place either (a) reasonable, or (b) absolute reliance upon docket entries—the official voice and record of the Court—in the proceedings in his appeal, and the Opinion also amounts to a denial to the Appellant of the Equal Protection. . ."

(Certified Record, p. 63.)

Decided as follows:

The appeal was dismissed (228 A2d at 315, —— Md.——, at last line of Opinion.)

The Motion for Reargument was denied on May 1, 1967. (Certified Record, p. 69).

ARGUMENT

Federal Question of Substance

Does the Constitution Apply to "Quasi-Private" Actions of Governmental Officials?

The argument in this case, urging granting of the writ, is based on the proposition that the Maryland court has decided a federal question of substance in a way which is not in accord with applicable decisions of this court, and has sought to protect the decision behind a novel

procedural facade which it has erected, it is respectfully argued, for the express purpose of preventing this Court from assailing the decision.

The clear principles, then, of three decisions of this Court have been violated:

Garrison v Louisiana 85 S. Ct. 209, 379 U.S. 64 on Free Speech

Thorpe v. Housing Authority 87A S. Ct. —— 385 U.S. ——, 35 LW 4366, on constitutional restrictions on government action, which private persons could perform unstrained (as here firing an employee).

NAACP v. Alabama 78 S. Ct. 1163, 357 U.S. 458, and other cases cited infra, on procedurally barricading appeal of a state court decision to this court.

The Petitioner was a lowly clerk in a lowly court—a traffic court.

He criticized his superior administrative officer with barbed anonymous letters. There was also a cartoon in a neighborhood newspaper.

Garrison v. Louisiana 85 S. Ct. 209, 379 U. S. 64, was a case decided in November 1964, in which Garrison, the District Attorney of Orleans Parish, Louisiana, informed the press in a statement issued at a press conference, that the eight judges of the Criminal District Court of the Parish were *inefficient, lazy, "vacation minded,"* and that they had *hampered his efforts to enforce the vice laws.* (Emph. supp.)

It was held (Brennan, J., speaking for the Court),

that:

". . . (W)here the criticism is of public officials and their conduct of public business, the interest in private reputation is overborne by the larger public interest, secured by the Constitution, in the dissemination of truth." (At 85 S. Ct. 215.)

And at ftnt. 9:

"Even the law of privacy . . . recognizes severe limitations where public figures or newsworthy facts are concerned."

And at p. 216:

"Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned. . . [O]nly those false statements made with the high degree of awareness of their probable falsity demanded by *New York Times* [v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710] may be the subject of either civil or criminal or criminal sanctions. For speech concerning public affairs is more than self-expression; it is the essence of self government."

At. 217:

"The *New York Times* standard forbids the punishment of false statements, unless made with knowledge of their falsity or in reckless disregard of whether they are true or false."

At 218:

"The test which we laid down in *New York Times* is not keyed to ordinary care; the defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth."

As to the Petitioner, the thought of applying such a standard *never occurred to his prosecutors,* and the record is wholly, completely, and entirely, devoid of any evidence that the charges were not *true* or that they were made by the Petitioner with *reckless disregard* of whether true or not.

Therefore, under *Garrison,* the statements attribted to the Petitioner *could not be the subject of either civil or criminal* sanctions.

It is respectfully submitted that the Petitioner's discharge from his clerical job *was* a "civil or criminal" sanction. It is not seen how it falls outside of that category, for if it was not that, then what was it?

In *Thorpe v Housing Authority of the City of Durham* (April 7, 1967) 35 LW 4366, this Court held, per curiam, that although a leasing agreement gave a housing authority an ostensible absolute right of eviction, yet, since it was a governmental agency, it had to observe the Constitution, and could not evict for arbitrary reasons, or reasons impairing the right of free association.

The case was remanded because of a changed order of operations issued for the housing authority by its administrative superiors, but Mr. Justice Douglas concurring, @35LW 4367, said:

> "[The Petitioner claimed in the pleadings] that her 'eviction primarily resulted from her community activities as an organizer of tenants, thus constituting an unconstitutional abridgment of her freedom of expression and a denial of equal protection of the law'...

@4368:

"This case present(s) two issues . . . Second, is whether a tenant in such a housing project can be evicted *for the exercise of a first Amendment right.* (Emph. supp.).

. . . "Over and over again we have stressed that 'the nature and theory of our institutions of government, the principles upon which they are supposed to rest . . . do not mean to leave room for the play and action of purely personal and arbitrary power.' (*Yick Wo* v *Hopkins* 118 U.S. 356, 369) and that the essence of due process is 'the protection of the individual against arbitrary action' *Ohio Bell Telephone Co. v Public Utilities Comm'r.* 301 U.S. 292, 302 (Mr. Justice Cardozo); *Slochower v. Board of Higher Education* 350 U.S. 551, 559 . . . It is not dispositive to maintain that a private landlord might terminate a lease at his pleasure. *For this is a government we are dealing with,* and the actions of government are circumscribed by the Bill of Rights and the Fourteenth Amendment. The government as landlord is still the government. It must not act arbitrarily, for unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process. *Rudder v. United States,* 226 F2d 51, 53. (Emph. Supp.)

"The recipient of a government benefit, be it a tax exemption (*Speiser v. Randall* 357 U.S. 513), unemployment compensation (*Sherbert v. Verner,* 374 U.S. 398), *public employment* (*Slochower v. Board of Education,* 350 U.S. 551), a license to practice law (*Spevack v Klein,* 385 U.S. 511), or a home

in a public housing project, cannot be made to forfeit the benefit because he exercises a constitutional right." (Emph. Supp.)

The only dissent in *Thorpe* was on the part of Mr. Justice White, not on the law, but based on his contention that the court below had found as a fact that the eviction was not because of the exercise of First Amendment rights. On the law, then, the Court was unanimous.

Maryland Failed to apply *Thorpe* or *Garrison*

The Maryland Courts in this case however, and the administrative body as well, of course, failed entirely-anywhere in the record—to apply the *Garrison v. Louisiana* standard, or that of *Thorpe.*

The decisions below, therefore, not having taken *Garrison* into account at all, nor *Thorpe,* were, it is respectfully urged, not consonant, on a matter of substance, with the holdings of this court.

A Matter of Great Public Concern, Not Yet Ruled Upon

Moreover the granting of the Petition would present an opportunity to expound on a matter of great public concern, and presently, a matter of largely undefined principle, concerning public instrumentalities doing acts which are ordinarily of a *private* character, and yet are increasingly being performed by administrative agencies of one sort or another, federal, state and municipal.

When acting in a normally private sector, how are these public officials required to act? Morally? Amorally, whenever money would be saved? As "Economic Man? As old-fashioned robber barons? Are agencies answerable only to the electorate through their superiors? Or to the Constitution, through the courts? Are they bound

by private conscience? Does their public duty require them to be conscienceless in serving the good of their agency? Are they bound by individual scruple? By constitutional prohibitions on public action?

The questions are perhaps difficult, perhaps not; but they have none of them been definitively answered. At least the one question of constitutional limitation on "quasi-private activity," by public agencies, it would seem, clearly needs answering.

In *Thorpe v. Housing Authority*, 35 LW 4366,——U.S. ——,—— S. Ct. ——, (April 7, 1967) the questions were not specifically reached. In that case, a tenant was evicted from a public housing project for allegedly exercising First Amendment rights, by organizing the tenants against the housing authority. So it was contended, at least. But the case was remanded, and except for Mr. Justice Douglas' concurrence, the Court has not expounded its philosophy on this important matter.

The Petitioner's Plight

This Petitioner's situation is similar to Thorpe's, however, and no remand without decision can succor him.

He alleged he was fired from a public clerical job of absolutely no policy-making importance because he exercised his right of Free Speech, by writing critical letters to his administrative superior, seeking correction of abuses which could only be corrected by higher-ups who were in policy-making positions. The letters were anonymous, and the decisions below upheld the firing by deciding that he was not fired for what he said, but because of how he said it—anonymously. In each instance, however, the decisions more or less pointedly refrained from discussing Free Speech protections, deciding only that

anonymous Free Speech was outside of constitutional protections, apparently in all circumstances.

One decision—that of the Baltimore City Court, went so far as to base this conclusion on the restricted holding in *Krennrich v U.S.*, 340 F2d 653, a case in which anonymous accusations of "running around with other women" were leveled at a superior by letters to his wife. (Page E. 8-E. 9 of Appellant's Appendix below.) From this case, the Baltimore City Court extrapolated the principle that *all* anonymous communications everywhere, under every circumstances, would be cause for discharge, despite the federal Constitution or any constitution.

The Free Speech In Question

The Petitioner's letters were pointed, but earnest requests to the bureau chief, for changes in his operating procedures. (E. 5-E. 7 "Appellant's Appendix").

Included was a suggestion that the office teletype line to the Commissioner of Motor Vehicles office not be used for private business. Included was a request for changes in traffic-warrant serving procedures, pointing out the occurrence of a flood of indignant phone calls to the office because of the then-current procedure, which the bureau chief was apparently unaware of. There also was a rather ordinary, but highly critical political cartoon published in a neighborhood weekly newspaper (of the free-distribution type, but carrying large amounts of responsible paid advertising), which was attributed to the Petitioner, and which was a major reason for his discharge. The cartoon is reprinted in the Appellees' Appendix below as p. 1 thereof, as filed, but does not appear in the copies supplied to the Petitioner. Copies have been added.

But the questions of the *Thorpe* case, important questions, remain unanswered, as yet.

An Attempt Has Been Made by the Maryland Court to Preclude this Court from Ruling

By not deciding the Free Speech question (except as an afterthought: "Were it necessary, we would rule that his dismissal was legally justified" 238 A2d at 315) the Maryland Court has attempted to foreclose further review of its proceedings.

It pretends that the Petitioner was lax, or lazy, or indifferent in following procedural rules, and filed his appeal late, for which he is to be punished.

He was not lax, but only poor.

He consciously sought to have as much time as possible to raise the heavy expenses of pursuing justice. In his Answer to the "Motion to Dismiss Appeal" before the Court of Appeals (at p. 1 of "Appellant's Answer to Motion. . .") he states, "the Appellant . . . was . . . attempting to extend as far as possible the time within which he could raise funds. . .". So much only can be argued within the Record, but there was more, it is respectfully argued, as may be inferred, it is suggested, from an absolute absence in the Record of any other inference of dilatoriness or laxity. Perhaps the court can take judicial notice of the practice of attorneys, often made, of utilizing the uttermost limit of time available, for practical reasons entirely removed from any question of procrastination. Nor, has the Maryland Court given even lip service to the modern doctrine taken over from equity, of abhoring a forfeiture.

Furthermore, the court Clerk, on whose "error" in his docket entry the Petitioner relied, was himself relying on the *Maryland Court's own Rule.* Rule 564b, *of the Maryland Court of Appeals* provides:

"Rule 564 Trial by the Court.

* * * * * *

"b. Judgment Nisi

"1. As directed by the Court

"Where an action at law is tried upon the facts by the court, the court shall direct judgment *nisi* to be entered upon the law and the evidence

* * * * * *

"Rule 567. New Trial

* * * * * *

"e. Effect of Failure to File Motion-Entry of Final Judgment.

"If a motion for new trial be not made, within the time prescribed by section a of this Rule [three days], the Clerk shall enter a final judgment as of course."

The Rule Applied by the Maryland Court is Novel

But, by *judicial sleight-of-hand,* bona fide reliance on the docket entry by the Petitioner became fatal. After full briefing, argument, and payment of legal expenses, after sweat, tears and sorrow in full measure, the Petitioner was told, in the sonorous cold voice of the court:

". . . [T]he entry of a judgment nisi in favor of the appellees [by the Court Clerk] was erroneous, and under the circumstances presented here, the appellant was not *privileged* to rely on the erroneous

state of the docket" (Emph. supp.—The *right* to rely was not discussed, be it noted). 228 A2d at 314, p. App. 4.

This is judicial sleight-of-hand, it is respectfully argued, and not decision-making, for it is conscientiously believed that this is a most novel interpretation of the procedural law—the usual, if not universal rule being it is respectfully suggested, that docket entries are correctible *in the court where made,* and until corrected, may be *absolutely* relied on:

> "Judicial records are not only necessary, but indispensable to the vitality of a court. The court . . . decides upon its records; it acts by its records; . . . its judgments can only be evidenced by its records . . . The acts of a court of record are known by its records alone and cannot be established by parol testimony . . . Furthermore, the records of a court cannot be impugned upon matters within its jurisdiction, when offered in evidence, by counter evidence.
>
> • • • • • •
>
> "(W)henever it is properly brought to the knowledge of the court that a record made by the clerk does not correctly show the order or direction which was in fact made by the court at the time it was given, the court has authority to correct its record in accordance with the facts. *American Jurisprudence,* Courts, Secs. 37 and 41.

Under the law in at least one case, in fact, the error is to be regarded as that of the *Respondent,* and not the Petitioner, according to a quotation from CJS Judgments, Sec. 108:

> "It is the duty of the *successful party* to cause the judgment to be entered, and to see that it is entered

correctly". Wood v. Reynolds 7 Watts & S 406 (Penna.), 34 C.J. p. 61 n. 17, Sandoval v. Rattikin (Texas) 395 S. W. 2d 889, cert. den. 87 S. Ct. 199. Sec. 281 P2d 296.

At 14 ALR 2d 224, a long, authoritative article on the subject of *notice* before correction of erroneous docket entries appears. The article assumes throughout, that corrections can only be made by the court which originally rendered the judgment.

The subject of this (the within) Petition is precisely discussed in 21 ALR 2d 295, an article entitled, "Amendment of judgment as affecting time for taking or prosecuting appellate review proceedings". It is therein stated, at p. 287.

"Generally, a court has power to amend records of its judgments by correcting mistakes, or supplying defects or omissions therein.[1] The question discussed in the present annotation is whether, when such amendment or correction has been made, the time for appeal is measured from the date of the original judgment, order, or decree, or from the date of the amendment or modification[2]

"Subject to certain qualifications separately discussed in the sections which follow, it seems to be the general rule that where a judgment, order, or decree is amended or modified, the time from which the appeal must be taken is to be computed from the date of the amendment or modification.

"*United States.*—United States v. Gomez (1864) 1 Wall 690, 17 L ed 677; Memphis v. Brown (1877) 94 US 715, 24 L

"[1] See 30 Am Jur 866, Judgments § 94.

"[2] The general subject of the power of the trial court indirectly to extend the time for appeal is discussed in an annotation in 89 ALR 941, supplemented in 149 ALR 740."

ed 244; Zimmern v. United States (1936) 298 US 167, 80 L ed 1118, 56 S Ct 706; Fultz v. Laird (1928, CA6th Mich) 24 F2d 172; Union Guardian Trust Co. v. Jastromb (1931, CA6th Mich) 47 F2d 689; Ray v. United States (1941, CA7th Ind) 121 F2d 416."

No Maryland cases are cited.

ALR 2d "Later Case Service," including pocket-part through 1966 shows no change in this view, nor does it cite any Maryland cases. The latest U.S. case cited is U.S. v. Adams, 383 U.S. 39, 15 L. Ed. 2d 572, 86 S. Ct. 708, in which this court expressed the view that where a timely motion to amend a judgment is filed, the time for applying for certiorari runs from the date of overruling of such motion. See 86 S. Ct. 709, text at ftnt. 1, and ftnt. 1.

The court there also held-and it would seem to be of interest here-that Supreme Court Rules 21 (1) and 33, as to service, are not jurisdictional, and that where no prejudice resulted in the failure to follow them, and the failure was inadvertent, it could not be availed of by a party (at p. 709 of 86 S. Ct.).

Such novel procedural interpretations as the Maryland Court adopted, however, as a bar to further review, by virtue of a series of decisions of this court, ordinarily won't work, it is respectfully suggested.

Review by this Court Cannot Be Thwarted by Novel Procedural Applications.

Thus, in *Douglas v State of Alabama* 380 U.S. 420, 85 S. Ct. 1074 at 1078, it was said, regarding state procedural requirements on the placing of an objection to a confession,

"In the light of [the form of objection actually made at trial], it is hard to understand the [Alabama] Court of Appeals' conclusion; nevertheless, accepting the finding as an authoritative interpretation of Alabama law, we follow our consistent holdings that the adequacy of state procedural bars to the assertion of federal questions is itself a federal question. See *Wright v. Georgia* 373 U.S. 284, 289-291, 83 S. Ct. 1240, 1243-1245, 10 L. Ed. 2d 349. In determining the sufficiency of objections, we have applied the general principle that an objection which is ample . . . to bring the alleged federal error to the attention of the trial court . . . is sufficient to serve legitimate state interests. . . ." (Citing federal cases).

In *Young v. Ragen* 69 S. Ct. 1073, 1074, 337 U.S. 235 (1949), it was held

". . . [O]f course Illinois may choose the procedure it deems appropriate for the vindication of federal rights. But is it not simply a question of procedure when a state court of last resort closes the door to *any* consideration of a claim of denial of a federal right." (Emph. the Court's).

And in *Wright v. State of Georgia*, 373 U. S. 289, 83 S. Ct. at 1244, state procedural Gordian knots were miraculously untied, opening the door of this court to review:

"A commentator on Georgia procedure has concluded that '[p]robably no phase of pleading in Georgia is fraught with more technicalities than with respect to raising constitutional issues.' Examination of the Georgia cases bears out this assertion. In an extraordinary number an attempt to raise

constitutional issues has been frustrated by a holding that the question was not properly raised or pursued. But '[w]hatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice,' Davis v. Wechsler, 263 U.S. 22, 24, 44 S. Ct. 13, 14, 68 L.Ed. 143. See also Love v. Griffith, 266 U.S. 32, 45 S. Ct. 12, 69 L.Ed. 157; Stromberg v. California, 283 U.S. 359, 51 S. Ct. 532, 75 L.Ed. 1117; Terminiello v. Chicago, 337 U.S. 1, 69 S. Ct. 894, 93 L.Ed. 1131; Staub v City of Baxley, 355 U.S. 313, 78 S. Ct. 277, 2 L.Ed.2d 302; N. A. A. C. P. v. Alabama ex rel. Patterson, 357 US. 449, 78 S. Ct. 1163, 2 L.Ed 2d 1488

"In this case the Georgia Supreme Court held that error in the denial of the motions for a new trial could not be considered because "[t]here was no argument, citation of authority, or statement that [the grounds for reversal stated in the new trial motions] • • • were still relied upon.' The court found 'the applicable rule, as laid down in Henderson, v. Lott, 163 Ga. 326(a), 136 S.E. 403, [to] be] • • •: 'Assignments of error, not insisted upon by counsel in their briefs or otherwise, will be treated by this court as abandoned.'

". . . As was said in a similar case coming to us from Georgia courts, this [requirement] 'would . . . force resort to an arid ritual of meaningless form.' *Staub v. City of Baxley*, supra, 355 U.S. at 320, 78 S. Ct. at 281. The State may not do that here any more than it could in *Staub*. Here, as in *Staub*,

the state ground is inadequate. Its inadequacy is especially apparent because no prior Georgia case which respondent has cited nor which we have found gives notice of the existence of any requirement that an argument in a brief be specifically identified with a motion made in the trial court. [A] local procedural rule, although it may now appear in retrospect to form a part of a consistent pattern of procedures . . . cannot avail the State here, because petitioner could not fairly be deemed to have been apprised of its existence. *Novelty in procedural requirements cannot be permitted to thwart review in this court . . .' NAACP v Alabama ex rel. Patterson,* supra 351 U.S. at 457, 78 S. Ct. at 1169." (Emph. supp.)

And in *NAACP v Alabama,* 357 U.S. 454, 78 S. Ct. 1163 at 1168,

". . . The State Supreme Court thereafter twice dismissed petitions for certiorari to review this final contempt judgment, the first time, 265 Ala. 699, 91 So. 2d 221, for insufficiency of the petition's allegations and the second time on procedural grounds. 265 Ala. 349, 91 So.2d 214. We granted certiorari because of the importance of the constitutional questions presented. 353 U.S. 972, 77 S. Ct. 1956, 1 L.Ed. 2d 1135.

"We address ourselves first to respondent's contention that we lack jurisisdiction because the denial of certiorari by the Supreme Court of Alabama rests on an independent nonfederal ground, namely, that petitioner in applying for certiorari had pursued the wrong appellate remedy under state law. Respondent recognizes that our jurisdiction is not

defeated if the nonfederal ground relied on by the state court is "without any fair or substantial support,' Ward v. Board of County Commissioners, 253 U.S. 17, 22, 40 S. Ct. 419, 421, 64 L.Ed. 751. It thus becomes our duty to ascertain, '* * * in order that constitutional guaranties may appropriately be enforced, whether the asserted non-federal ground independently and adequately supports the judgment.' Abie State Bank v. Bryan, 282 U.S. 765, 773, 51 S. Ct. 252, 255, 75 L.Ed. 690.

"The Alabama Supreme Court held that it could not consider the constitutional issues underlying the contempt judgment which related to the power of the State to order production of membership lists because review by certiorari was limited to instances '* * * where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained * * *' 265 Ala. at page 353, 91 So.2d at page 217. The proper means for petitioner to obtain review of the judgment in light of its constitutional claims, said the court, was by way of mandamus to quash the discovery order prior to the contempt adjudication. Because of petitioner's failure to pursue this remedy, its challenge to the contempt order was restricted to the above grounds. Apparently not deeming the constitutional objections to draw into question whether 'on the face of it the order disobeyed was void,' the court found no infirmity in the contempt judgment under this limited scope of review.

* * * * * *

"We are unable to reconcile the procedural holding of the Alabama Supreme Court in the present case with its past unambiguous holdings as to the scope of review available upon a writ of certiorari addressed to a contempt judgement. . . .

"Even if that is indeed the rationale of the Alabama Supreme Court's present decision, such a local procedural rule, although it may now appear in retrospect to form part of a consistent pattern of procedures to obtain appellate review, cannot avail the State here, because petitioner *could not fairly be deemed to have been apprised of its existence. Novelty in procedural requirements cannot be permitted to thwart review in this Court* applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights. Cf. Brinkerhoff-Faris Trust & Savings Co. v. Hill 281 U.S. 673, 50 S. Ct. 451, 74 L.Ed. 1107." (Emph. supp.)

Once again, in *Barr v City of Columbia*, 378 US. 148, 84 S. Ct. 1734, this court examined an attempt below to decide a matter once and for all, and undisturbed by any high-flown constitutional principles, by not deciding it:

"We consider first the question whether petitioners' convictions for breach of the peace are constitutionally valid. Apart from the fact that petitioners remained in the store after having been asked to leave, there is a complete and utter lack of any evidence, and no suggestion in the opinions of any of the courts below, that any of the petitioners did anything disorderly or did anything other than politely ask for service. Petitioners argue that either

the breach-of-peace statute as applied to their conduct was unconstitutionally vague for failure to give fair warning, cf. Lanzetta v. New Jersey, 306 U.S. 451, S. Ct. 618, 83 L.Ed. 888, or there was no evidence to support convictions for violation of that statute, cf. Thompson v. City of Louisville, 362 U.S. 199, 80 S. Ct. 624, r L.Ed. 2d 654.

"*The city replies that, because the Supreme Court of South Carolina refused to pass on objections to the breach-of-peace conviction on the ground that the exceptions taken below were 'too general to be considered,' we are precluded from considering petitioners' constitutional objections.*

"We cannot accept the city's argument, since in City of Columbia v. Bouie, 239 S.C. 570, 124 S.E.2d 332, rev'd on another point, 378 U.S. 347, 84 S. Ct. 1697 decided only a few weeks after the present case, the State Supreme Court had before it the identical two exceptions, and relying on them reversed for insufficiency of evidence the conviction of a peaceful and quiet sit-in demonstrator who had been convicted on a charge of resisting arrest. In three other cases decided in the two-month period preceding the present decision it likewise considered these same exceptions enough to raise the question of sufficiency of evidence, and in one of those three cases, decided the day before the present one, it reversed on that ground a conviction for interfering with an officer. *We have often pointed out that state procedural requirements which are not strictly or regularly followed cannot deprive us of the right to review.* See e.g., N.A.A.C.P. v Alabama ex rel Flowers, 377 U.S. 288, 84 S. Ct. 1302; Shuttlesworth v. City of

Birmingham, 376 U.S. 339, 84 S. Ct. 795, 11 L.Ed.2d 766; Wright v. Georgia, 373 U.S. 284, 83 S. Ct. 1240, 10 L.Ed.2d 349; N.A.A.C.P. v. Alabama ex rel. Patterson, 357 U.S. 449, 78 S. Ct 1.163, 2 L.Ed.2d 1488. We conclude that there is no adequate state ground barring our review of the breach-of-peace convictions. (Emph. supp.)

It is hoped that the same rule will be found applicable here.

CONCLUSION

Wherefore, it is respectfully urged, that certiorari be granted, directing the Court of Appeals of Maryland to submit its Record in the within case for review by this Court of its rulings, or lack of same, on the federal questions of substance raised in that Record.

Respectfully submitted,

LEONARD J. KERPLEMAN,
500 Equitable Bldg.
Baltimore 2, Maryland
Attorney for Petitioner.

APPENDIX A

OPINION OF COURT OF APPEALS OF MARYLAND

JOSEPH F. LUCKE

v.

COMMISSIONER OF PERSONNEL of the State of Maryland et al.

No. 194.

Court of Appeals of Maryland
April 7, 1967
(228 A2d 313)

Civil service employee was discharged by the Commissioner of Personnel. On appeal, the Baltimore City Court, Dulany Foster, C. J., affirmed the commissioner's order of discharge and the employee appealed. The Court of Appeals held that fact that court docket contained erroneous entry of judgment nisi did not extend employee's time for filing an appeal with the Court of Appeals.

Appeal dismissed.

1. Judgment

Principal purpose of entry of judgment nisi is to enable an aggrieved party to file motion for new trial in cases tried on the facts by the court.

2. Municipal Corporations 218(9)

Judgment by city court affirming commissioner of personnel's dismissal of employee was final judgment which was immediately appealable in the manner provided by law for appeals from law courts in civil cases. Code 1957, art. 41, §§ 244-256, 255(e); Maryland Rules, Rule 564b.

3. Municipal Corporations 218(9)

Fact that court docket contained erroneous entry of judgment nisi in civil service employee's appeal from commissioner of personnel's order discharging employee did not extend employee's time for filing an appeal to the Court of Appeals. Code 1957, art. 41, §§ 244-256, 255(e); Maryland Rules, Rule 564b.

Leonard J. Kerpelman, Baltimore, for appellant.

John W. Sause, Jr., Sp. Atty., Centreville (Francis B. Burch, Atty. Gen., and Franklin Goldstein, Asst. Atty. Gen., Baltimore, on the brief), for appellees.

Before HAMMOND, C. J., and HORNEY, OPPENHEIMER, BARNES and McWILLIAMS, JJ.

PER CURIAM.

The appellant, Joseph F. Lucke, was suspended from his position in the Clerk's Office of the Municipal Court of Baltimore City on July 17, 1964, pending a hearing on formal charges filed with the Commissioner of Personnel under the Merit System Law, Code (1957), Article 64A. The Commissioner, in a written decision, found that Lucke had written and sent various anonymous communications to the Chief Judge of the Municipal Court, and that their nature warranted the appellant's dismissal from State service. The appellant appealed to the Baltimore City Court pursuant to the Administrative Procedure Act, Code (1965 Repl. Vol.), Art. 41, sec. 255. The court (Cullen, J.) remanded the case for further hearing because the appellant's new counsel was unfamiliar with the facts and the appellant himself was not present to testify.

The Commissioner of Personnel entered a "Supplemental Order" on June 29, 1965, again finding that Lucke was the author of the anonymous communications referred to in the charges and directing that his services be terminated effective on the date of his suspension. A second appeal to the Baltimore City Court followed from this order of the Commissioner. After full argument, the Court (Foster, J.) on March 29, 1966, filed a memorandum opinion carefully considering and rejecting each of the appellant's contentions. The opinion concluded:

> "The appellant, having failed to convince the Court that there was any prejudicial error in the proceedings before the Commissioner of Personnel, or that any of appellant's rights had been violated, and there admittedly being substantial evidence before the Commissioner on which to base his decision, *the Commissioner of Personnel is hereby affirmed.*
>
> /s/ Dulany Foster,
> *Judge.*
>
> *March 29, 1966*" (Emphasis supplied). (Sic, in Opinion)

Counsel for the appellant admitted, before this Court, that, having represented the appellant in his second appeal to the Baltimore City Court, a copy of the lower court's memorandum and order was received by him. The appeal to this Court was entered on May 2, 1966, *more than 30 days after* the date of the March 29, 1966, order of the Baltimore City Court. We agree with the appellee that the appeal must be dismissed because it was filed beyond the period permitted by Maryland Rule 812. See also Code (1957), Art. 41, sec. 256.

There could be no doubt that the appeal was filed too late, but for the docket entries made by the clerk of the Baltimore City Court:

> "3/29/66, The decision of The Commissioner of Personnel is hereby affirmed. Memorandum Opinion and Order of The Court (Judge Dulaney [sic] Foster filed.
>
> "3/29/66, Judgment nisi in favor of appellees (defendants).
>
> "4/1/66, Judgment made absolute in favor of the appellees (defendant), for costs of suit."

The appellant claims that he had a right to rely on these docket entries, and it is true that were "4/1/66" taken as the date of the judgment appealed from, the appeal to this Court was timely filed.[1] We hold, however, that the entry of a judgment nisi in favor of the appellees was erroneous, and under the circumstances presented here, the appellant was not privileged to rely on the erroneous state of the docket.

(1)

[1, 2] The principal purpose of the entry of a judgment nisi is to enable an aggrieved party to file a motion for a new trial in cases tried on the facts by the court. Merlands Club, Inc. v. Messall, 238 Md. 359, 208 A.2d 687 (1965). Proceedings under the Administrative Procedure Act, however, do not include provision for a new trial. Instead, the reviewing court—in this instance, the Baltimore City Court—is given broad discretion to order the taking of new evidence in open court or before the agency, or where justice requires, to remand the case for further proceedings. Art. 41, sec. 255(e). Through

[1] May 1, 1966 fell on a Sunday.

the medium of this intermediate appeal, the aggrieved party is given a complete opportunity to "show cause" why an administrative judgment should not be entered. Cf. Hodgson v. Phippin, 159 Md. 97, 150 A. 118 (1930). Indeed, Judge Cullen on the appellant's first appeal, remanded the case to the agency so that further testimony could be taken and the matter further considered. Maryland Rule 564b, relating to the entry of judgment nisi, does not apply to proceedings under the Administrative Procedure Act, Art. 41, Ch. 24, (sections 244—256). The judgment nisi was entered in error. The judgment of the Baltimore City Court on March 29, 1966, affirming the Commissioner of Personnel, was a final judgment, immediately appealable "in the manner provided by law for appeals from law courts in other civil cases." Art. 41, sec. 256.

(2)

[3] The fact that the docket contained the erroneous entry of a judgment nisi cannot, as a matter of law, extend the appellant's time for filing an appeal. In Baltimore Luggage Co. v. Ligon, 208 Md. 406, 118 A.2d 665 (1966), the case which led to the revision of the rules relating to the entry of judgments nisi, the trial court led counsel to believe that he would enter a judgment nisi on the jury's special verdict, but, without informing either counsel, directed the clerk to enter a final judgment. Under the provisions of the then existing Maryland Rule, a judgment nisi, if entered, would have been legally improper under the facts of that case. It was held that the parties could not, as a matter of law, rely entirely on the judge's indicated purpose, but were charged with knowledge that the entry of a judgment nisi had "no place" in the case and that a final judgment was, in fact, entered on the court records.

While Baltimore Luggage presages our holding in the case before us, the decision in Bond v. Citizens National Bank, 65 Md. 498, 4 A. 893 (1886), controls it. In *Bond*, a party moved to strike out a judgment on grounds of irregularity consisting of the failure to enter the judgment in the original trial docket before entry in the judgment record. Because of the omission, the party lost the right to appeal from the judgment, but the Court stated:

> "This, as a ground for striking out the judgment, is wholly untenable. The defendants' attorney could have easily learned of the entry of the judgment by examination of the record, or by inquiry of the clerk. It does not appear that he did either; though he says he did examine the original trial docket, and found no entry of the judgment."

If no complaint will lie by a party who is alleged to have been misled by an *absent* docket entry, no better case is posed by a party who is allegedly misled by an erroneous docket entry, especially where his attorney was promptly notified of the court's order of March 29, 1966, affirming the decision of the Commissioners of Personnel. This order is at law a final judgment, for, as already discussed, a judgment nisi is not contemplated when a court rules on an appeal under the Administrative Procedure Act.

(3)

We add that we have carefully reviewed the merits of the appellant's contentions, and were it necessary, we would rule that his dismissal was legally justified.

Appeal dismissed, the appellant to pay the costs.

APPENDIX B

MANDATE

Court of Appeals of Maryland

No. 194, September Term, 1966

JOSEPH F. LUCKE v. Commissioner of Personnel of the State of Maryland, et al	Appeal from the Baltimore City Court. Filed June 17, 1966. January 4, 1967: Motion to dismiss appeal filed. January 23, 1967: Answer to above motion filed. April 7, 1967: Appeal dismissed, the appellant to pay the costs. Per Curiam filed. April 17, 1967: Motion for reargument filed. April 20, 1967: Answer to above motion filed. May 1, 1967: Motion for reargument denied.

* * * * * *

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this eighth day of May A.D. 1967.

J. LLOYD YOUNG

Clerk of the Court of Appeals of Maryland.

* * * * * *

APPENDIX C

Rules of Commissioner of Personnel

RULE 45—DISCIPLINARY ACTION

A. Disciplinary actions shall include official reprimand, disciplinary suspension without pay, involuntary demotion, rejection on probation, removal under charges from a position in the classified service and permanent disqualification from future employment in the classified service.

B. Disciplinary actions shall be taken only in accordance with the provisions of the Merit System Law and Personnel Rules. No disciplinary actions shall be allowed because of the religious or political opinions or affiliations of any employee or because of his failure to contribute to any fund.

RULE 46—DISCIPLINARY SUSPENSION

The appointing authority and in his absence the officer acting in his place, may for disciplinary purposes suspend without pay an employee in his organization unit from the performance of his duty, on account of misconduct, negligence, inefficiency, insubordination disloyalty, or any other reason satisfactory to the Commissioner. In each case, regardless of the period of disciplinary suspension, written notice of such action shall be on the form provided by the Commissioner, which states the reasons for the suspension and the duration thereof, and shall be given to the suspended employee or mailed to his last known address. The prescribed number of copies of such notice shall be furnished forthwith to the Commissioner. An employee suspended for a period aggregating more than fifteen working days in any calendar year may appeal such additional suspension or suspen-

sions to the Commissioner. After an investigation, the Commissioner shall determine whether the suspension is justified and shall approve, change or modify the suspension, according to such determination.

RULE 47—CAUSES FOR REMOVAL

Any employee in the classified service may be permanently removed from his position only for cause and, except in the case of rejection on probation, only upon written charges and after an opportunity to be heard in his own defense, and in no case on account of his religious or political opinions or affiliations or for refusing to contribute to a political fund or render political services. The following shall be sufficient cause of removal, though removal may be for causes other than those enumerated:

A. That the employee is incompetent or inefficient in the performance of his duty.

B. That the employee has been wantonly careless or negligent in the performance of his duty or has been brutal in his treatment of public charges, fellow employees, or other persons.

C. That the employee has some permament or chronic physical or mental ailment or defect that incapacitates him for the proper performance of his duties.

D. That the employee has violated any lawful official regulation or order or failed to obey any lawful and reasonable direction given by his superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in a lower morale in the organization or to result in loss or injury to the State or the public.

E. That the employee has been wantonly offensive in his conduct toward fellow employees, wards of the State, or the public.

F. That the employee has taken for personal use, a fee, gift, or other valuable thing in the course of his work or in connection with it when such fee, gift, or other valuable thing is given him by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

G. That the employee is engaged in a private business or in a trade or occupation when the duties of his position as prescribed by law or regulation require his entire time for their performance.

H. That the employee has failed to pay or make reasonable provision for the future payment of just debts when annoyance is caused a superior officer or scandal is caused to the service by such failure.

I. That the employee has been guilty of a violation or violations of Section 40 of the Merit System Law.

J. That the employee has been convicted of a criminal offense or of a misdemeanor involving moral turpitude.

K. That the employee, through negligence or willful conduct, has caused damage to public property or waste of public supplies.

L. That the employee has been guilty of a violation or violations of the provisions of Chapter 122 of the Acts of 1908, commonly known as the Corrupt Practices Act, or using, threatening to use, or attempting to use political influence or the influence of any State employee or officer in securing promotion, transfer, leave of absence, or increased pay.

M. That the employee has willfully made a false official statement or report.

N. That the employee has been guilty of conduct such as to bring the classified service into public disrepute.

SUPREME COURT, U. S.

NOV 13 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 402

JOSEPH F. LUCKE,

Petitioner,

v.

RUSSELL S. DAVIS,
COMMISSIONER OF PERSONNEL OF THE STATE OF MARYLAND,
AND
THE MUNICIPAL COURT OF BALTIMORE CITY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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The Daily Record Co., Baltimore, Md. 21203

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 402

JOSEPH F. LUCKE,

Petitioner,

v.

RUSSELL S. DAVIS,
COMMISSIONER OF PERSONNEL OF THE STATE OF MARYLAND,
AND
THE MUNICIPAL COURT OF BALTIMORE CITY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINION BELOW

The Opinion of the Maryland Court of Appeals in the case as to which a writ of certiorari is sought, entitled "Joseph F. Lucke v. Commissioner of Personnel, No. 194, September Term, 1966", was filed April 7, 1967, published at 245 Md. 706, 228 A. 2d 313, motion for reargument denied May 1, 1967.

JURISDICTION OF THE COURT

The jurisdiction of this Court has been invoked under Rule 19(a) of the Revised Rules of the Supreme Court, which permits review on certiorari.

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Jurisdiction is further asserted under 28 U.S.C., Section 1257(3), which permits certiorari from final judgments of the highest courts of the states "where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of . . . the United States". It is to be noted at this point that the Petitioner does not claim that jurisdiction is present since the Court of Appeals of Maryland did not render a decision on a federal question which would fit the definitive meanings of either of the jurisdictional sources but decided the case on a matter of Maryland procedural law. It is by means of construction that the Petitioner attempts to bring this matter within the purview of jurisdictional sources, claiming that the action of the Court of Appeals of Maryland was essentially fraudulent and designed to deprive this Court of its powers of review by certiorari.

CONSTITUTIONAL PROVISION

The constitutional provision sought to be involved in this case is the First Amendment to the United States Constitution, having to do with freedom of speech.

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances."

MARYLAND LAW

CONSTITUTION, ARTICLE IV

Section 18. *Judges of Court of Appeals to make rules, etc., for prosecution of appeals and governing proceedings and practice in courts of equity.*

It shall be the duty of the Judges of the Court of Appeals to make and publish rules and regulations for the prosecution of appeals to the appellate Courts whereby they shall prescribe the periods within which appeals may be taken, what part or parts of the proceedings in the Court below shall constitute the record on appeal, and the manner in which such appeals shall be brought to hearing or determination, and shall regulate, generally, the practice of said Court of Appeals and any intermediate courts of appeal so as to prevent delays, and promote brevity in all records and proceedings brought into said Courts, and to abolish and avoid all unnecessary costs and expenses in the prosecution of appeals therein; and the said Judges shall make such reduction in the fees and expenses of the said Courts as they may deem advisable. It shall also be the duty of said Judges of the Court of Appeals to devise, and promulgate by rules, or orders, forms and modes of framing and filing bills, answers, and other proceedings and pleadings in Equity; and also forms and modes of taking and obtaining evidence, to be used in Equity cases; and to revise and regulate, generally, the practice in the Courts of Equity of this State, so as to prevent delays, and to promote brevity and conciseness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses attending the same. And all rules and regulations hereby directed to be made, shall, when made, have the force of Law, until rescinded, changed, or modified by the said Judges, or the General Assembly.

Section 18A. *Powers and duties of Chief Judge of Court of Appeals; assignment of judges; rule-making power of Court of Appeals.*

The Chief Judge of the Court of Appeals shall be the administrative head of the judicial system of the State. He shall from time to time require, from each of the judges of the Circuit Courts for the several counties and of the Supreme Bench of Baltimore City, and of any intermediate courts of appeal, reports as to the judicial work and business of each of the judges and their respective courts. He may, in case of a vacancy or of the illness, disqualification or other absence of any judge of the Court of Appeals or of any intermediate court of appeal, or for the purpose of relieving an accumulation of business in any of said courts, designate and assign any judge of the Court of Appeals (if the assignment is to be made to an intermediate court of appeal), any judge of any intermediate court of appeal (other than that to which the assignment is to be made), any judge of any of the Circuit Courts for the counties, or any judge of the Supreme Bench of Baltimore City to sit in any case or cases or for a specified period as a judge of the Court of Appeals or of any intermediate court of appeal (as the case may be) in lieu of a judge of such Court. The Chief Judge of the Court of Appeals also may designate and assign, to sit as a judge, of the Circuit Court for any county or the Supreme Bench of Baltimore City and of any other Court or Courts of Baltimore City which may be held by a judge of said Supreme Bench, either alone or with one or more other judges, in any case or cases or for a specified period, any judge of the Court of Appeals or of any intermediate court of appeal or of any other Circuit Court or of the Supreme Bench of Baltimore City. Any judge designated and assigned by the Chief Judge of the Court of Appeals pursuant to this section shall have all

the power and authority pertaining to a judge of the Court to which he is so assigned; and his power and authority shall continue with respect to all cases (including any motions or other matters incidental thereto) which may come before him by virtue of such designation and assignment until his action thereon shall be completed. In the absence of the Chief Judge of the Court of Appeals the provisions of this section shall be applicable to the senior judge present in said Court of Appeals. The powers of the Chief Judge under the aforegoing provisions of this section shall be subject to such rules and regulations, if any, as the Court of Appeals may make. The Court of Appeals from time to time shall make rules and regulations to revise the practice and procedure in the appellate courts and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law. The power of the courts other than the Court of Appeals to make rules of practice and procedure shall be subject to the rules and regulations prescribed by the Court of Appeals or otherwise by law.

MARYLAND CODE

ARTICLE 41

ADMINISTRATIVE PROCEDURE ACT

§ 244. *Definitions.*

For the purpose of this subtitle:

(a) "*Agency*" means any State board, commission, department or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches, and except the Department of Parole and Probation, the State Industrial Accident Commission, the State Insurance Deparment of Maryland, the Public

Service Commission, the Employment Security Board and the State Tax Commission.

(b) *"Rule"* includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of the agency and not directly affecting the rights of or procedures available to the public.

(c) *"Contested case"* means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or contitutional right to be determined after an agency hearing.

§ 255. *Same—Judicial review.*

(a) *Right to review.*—Any party aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this subtitle.

(b) *Where proceedings instituted; intervening parties.*—Proceedings for review shall be instituted in the circuit court of the county or in the Baltimore City Court, as the case may be, either where any party resides or has his or its principal place of business. The Court, in its discretion, may permit other interested persons to intervene.

(e) *Additional evidence.*—If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken in open court or before the agency upon such conditions as the court deems proper. In cases in which the additional evidence is taken before the agency, it may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) *Heard without a jury; testimony, oral argument and written briefs.*—The review shall be conducted by the court without a jury. In cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(g) *Affirmance, remand, reversal or modification of decision.*—The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or

(6) Against the weight of competent, material and substantial evidence in view of the entire record, as submitted by the agency and including de novo evidence taken in open court; or

(7) Unsupported by the entire record, as submitted by the agency and including de novo evidence taken in open court; or

(8) Arbitrary or capricious.

§ 256. *Same—Appeals to Court of Appeals.*

An aggrieved party may secure a review of any final judgment of the circuit court or Baltimore City Court, as the case may be, under this subtitle by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from law courts in other civil cases. This section shall not apply to cases arising under Article 66½ of the Annotated Code of the Public General Laws of Maryland in which no right to appeal to the Court of Appeals is specifically provided.

Article 5

Appeals to Court of Appeals

Appeals from Courts of Law

§ 1. *Appeals from final judgments; judgments on appeal from justices of peace, etc.*

Any party may appeal to the Court of Appeals from any final judgment or determination of a court of law in any civil suit or action, including a mandamus action, or in any prosecution for the recovery of any penalty or fine or damages; provided, however, that this section shall not

be construed to permit an appeal to the Court of Appeals from any judgment or determination entered by a court of law in the proper exercise of its jurisdiction on appeal from a justice of the peace, people's court or trial magistrate.

MARYLAND RULES

CHAPTER 1100.

SPECIAL PROCEEDINGS

Subtitles A to Z and BA to BZ

Subtitle B. Administrative Agencies—Appeal From

Rule B1. *General Provisions.*

a. *Actions to Which Applicable.*

This subtitle shall apply to the review of any final action of an administrative agency by a court where such review is specially authorized by statute, regardless of the form of such review, except where review is by way of mandamus, in which case the rules relating to mandamus shall apply. An application for a review is hereinafter referred to as an appeal.

b. *Administrative Agency Defined.*

The term "administrative agency", as used in this Subtitle, shall mean any board, department, commission, authority, commissioner or other officer of the State or of a county or local government, whether appointed or elected, whether legislative, administrative, executive, ministerial or quasi-judicial, whose action or decision is specifically subject to court review, except by way of mandamus, by any provision now or hereafter set forth in any general or local statute, ordinance or regulation now or hereafter in effect; but shall not mean any court created by Article IV of the Constitution of Maryland, People's Court, Trial Magistrate or Justice of the Peace.

Rule B2. *How Appeal Taken.*

a. *Order for Appeal.*

An appeal hereunder shall be taken by filing with the clerk of the proper court an order for appeal.

b. *Jurisdiction.*

An appeal may be filed in a court in which it is now or hereafter permitted by law.

c. *Service on Agency.*

The appellant shall, prior to filing an order for appeal, serve a copy thereof pursuant to Rule 306 c (Service of Pleadings and Other Papers) on the agency whose action is appealed from. A certificate of compliance with this section shall be attached to the order for appeal.

d. *Notice to Other Parties.*

Promptly after receipt of such copy the agency shall, unless the court shall otherwise order, give written notice by mail or otherwise of the filing of the appeal to every party to the proceeding before it, or his representative. A certificate of compliance with this section shall be filed in the proceedings by the Agency.

e. *Petition.*

The appellant shall join with his order for appeal, or shall file with the clerk of the court, within ten days after filing the order, a petition setting forth the action appealed from, the error committed by the agency in taking such action, and the relief sought, and shall serve a copy thereof on the agency.

Rule B3. *Who May Appeal.*

An appeal may be taken by a person now or hereafter authorized by statute to appeal.

Rule B4. *Time for Filing.*

a. *Within Thirty Days.*

An order for appeal shall be filed within thirty days from the date of the action appealed from, except that where the agency is by law required to send notice of its action to any person, such order for appeal shall be filed within thirty days from the date such notice is sent, or where by law notice of the action of such agency is required to be received by any person, such order for appeal shall be filed within thirty days from the date of the receipt of such notice.

b. *Change of Time.*

Upon application of a person authorized to appeal or a party to the proceeding before the agency, and for sufficient cause shown, a court in which the order for appeal may be filed may reduce such time, and such court or agency may extend it for not more than sixty days.

c. *Time for Filing Application to Extend Time.*

An application to extend the time for filing an order for appeal shall be filed within the time required by this Rule for the filing of an order for appeal.

d. *Notice of Application to Reduce Time.*

An order of court reducing the time for filing an order for appeal shall not be effective as to a person who was not notified, in writing, of the application therefor at least three days prior to the consideration of such application by the court.

e. *Notice of Application to Extend Time.*

An application to extend the time for filing an order for appeal shall not be granted by the court or agency unless the agency and all parties to the proceeding before the agency shall have been notified in writing of such applica-

tion at least three days prior to the consideration thereof by the court or agency; provided, that where there were more than five parties to the proceeding before the agency, it shall be sufficient to give such notice to such parties as shall be designated by the court or the agency, as the case may be.

f. Delivery of Copy of Order to Agency.

A copy of an order of court extending or reducing the time for filing an order for appeal, attested by the clerk, shall be delivered to the agency and made a part of its record in the case.

Rule B5. *Dismissal of Appeal.*

If the appellant shall fail to file his order for appeal within the time prescribed by Rule B4 (Time for Filing) or any order issued pursuant thereto, or shall fail to file his petition within the time prescribed by section e of Rule B2 (How Appeal Taken), the court shall dismiss the appeal unless cause to the contrary be shown.

Rule B6. *Stay.*

a. *Stay—Order of Court.*

The filing of an appeal shall not act as a stay of the action appealed from, except that the court, after notice to the agency and hearing, may grant a stay upon such condition or such security or bond as may, in its discretion, seem proper.

b. *No Stay from Workmen's Compensation Commission.*

The court shall not have authority to order a stay in an appeal under Code Article 101, section 56.

Rule B7. *Record.*

a. *Time Within Which Required—Content.*

Promptly after receipt of a copy of the first petition filed in a case pursuant to section e of Rule B2 (How Appeal

Taken) and in any event within thirty days after such receipt, unless a different time shall be fixed by order entered pursuant to section b of this Rule, the agency shall transmit to the clerk of the court the original or a certified copy of the record of its proceedings, including any transcript of testimony and any exhibit filed therein; if the testimony has been recorded but not transcribed prior to the filing of the appeal, the appellant, unless otherwise provided by law, shall, if required by the agency, pay the expense of transcription and that expense shall be taxed as costs; provided, that there shall be omitted such papers as the parties to the appeal shall designate by stipulation, and such stipulation shall be transmitted with the record. (Amended Sept. 15, 1961.)

b. *Change of Time.*

Upon application of any party, including the agency, and for sufficient cause shown, the court may direct that the record be transmitted in such shorter or longer time, not exceeding ninety days after receipt of the first copy of a petition of appeal, as may be ordered, except that the record need not be transmitted until after disposition of a demurrer or similar pleading.

c. *Delay.*

An appeal shall not be dismissed because the record has not been transmitted within the time prescribed, if it appears to the court that such delay was occasioned by the neglect, omission or inability of the agency or other party other than the appellant; provided, however, that such neglect, omission or inability shall not be presumed, but must be shown by the appellant.

d. *Statement in Lieu of Record.*

When the question presented by an appeal can be determined by the court without an examination of all the

record, the parties, with the approval of the agency, may prepare and sign a statement of the case showing how the question arose and was decided, and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such question by the court. Such statement, when filed with the clerk of the court shall be treated as superseding, for the purpose of the appeal, all parts of the record other than the decision from which the appeal is taken and any opinion of the agency, and, together with such decision and opinion, shall be certified to the court as the record on appeal.

Rule B8. *Amendment.*

The court, in its discretion, may permit a party, by amendment, to raise any pertinent question not raised by a prior pleading.

Rule B9. *Answer.*

A party to the proceeding before the agency, or to whom the agency is required by law to give notice of the action appealed from, who desires to participate in the appeal as a party, and the agency, when it is entitled by law to be a party to the appeal, shall file with the clerk of the court, within thirty days after the filing of the petition of appeal, or such longer or shorter time as may be fixed by the Court, a demurrer, or an answer admitting or denying a fact alleged in such petition and asserting briefly such defense as he or it may see fit, or other appropriate pleading. Prior to filing, a copy of the answer or other appropriate pleading shall be served on the appellant and to it shall be attached a certificate by the appellee or his or its counsel that this requirement has been complied with.

Rule B10. *Additional Evidence.*

Additional evidence may be allowed when permitted by law.

Rule B11. *Jury Trial.*

A party entitled by law to trial by jury may elect a jury trial.

Rule B12. *Decision.*

The Court shall affirm, reverse or modify the action appealed from, remand the case to the agency for further proceedings, or dismiss the appeal as now or hereafter provided by law.

RULES 500 ETC.

TRIAL—LAW AND EQUITY

Rule 564. *Trial by the Court* ..... Law

a. *Submission for.*

The parties to an action may submit the same to the court for determination without the aid of a jury.

b. *Judgment Nisi.*

1. As directed by Court.

Where an action of law is tried upon the facts by the court, the court shall direct judgment *nisi* to be entered upon the law and the evidence.

2. Memorandum of Grounds for Decision.

Upon the motion of any party, the court shall dictate to the court stenographer or prepare and file a brief statement of the grounds for its decision and the method of determining any damages awarded, pursuant to Rule 18 c (Judge—Memorandum of Grounds for Decision).

3. No Instructions. Objections or Exceptions.

A request for instructions and an objection or exceptions to the judgment or to the opinion of the court is not required for the purpose of review. (G.R.P.P. Pt. Three, III, Rule 9a; amended Sept. 26, 1957.)

c. *Ruling on Motion for New Trial.*

Upon a motion for a new trial, filed within the time required by Rule 567 (New Trial), the court may, in ruling on such motion,

(1) deny the motion and direct the clerk to enter a final judgment, or

(2) grant the motion and direct a new trial, or

(3) grant a partial new trial pursuant to section c of Rule 567 (New Trial), or

(4) open the judgment *nisi* or final judgment, if one has been entered, revise it or amend it, and may take additional testimony and direct the entry of another judgment.

Rules 800 etc.

APPEALS TO COURT OF APPEALS

Rule 812. *Appeal—Time for Filing.*

a. *Within Thirty-Days.*

Whenever an appeal to this Court or an application to this Court for a writ of certiorari is permitted by law, the order for appeal or the application for a writ of certiorari shall be filed within thirty days from the date of the judgment appealed from, except (i) as provided in section b of this Rule and (ii) in the case of an application for a writ of certiorari to the Court of Special Appeals, which shall be filed within 30 days from the date of the mandate of the Court of Special Appeals.

QUESTIONS PRESENTED

1. Whether the Petitioner has standing to petition for certiorari.

2. Assuming that he does, whether there are special and important reasons for the granting of the writ.

STATEMENT OF THE CASE*

The Petitioner was an assistant clerk in the Municipal Court of Baltimore City. That court was created by an amendment to the Constitution of the State of Maryland, ratified November 8, 1960, and printed as Part V-B, Section 41C of Article IV of the Maryland Constitution (Volume 9A, Annotated Code of Maryland, 1963 Replacement Volume, p. 176). The court exercises primary criminal jurisdiction within the City of Baltimore, performing the functions of the former police station magistrates and traffic court magistrates.

During the course of his employment Petitioner chose to take issue with the conduct of the court and of the chief clerk of the court, expressing his dissatisfaction by addressing offensive correspondence to the Chief Judge (T. Barton Harrington) and by preparing and publicizing a critical cartoon, all of which was anonymous.

Typical of the communications to the Chief Judge of the Municipal Court, the Honorable T. Barton Harrington, are the following exhibits which are summarized here for the convenience of the Court.

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* References herein to the Record are as follows:
1—The Appendix in Appellant's brief C.A. Md. — "E. ____."
2—The Appendix in Petition for Certiorari — "P. Apx. ____."
3—The Appendix in this Brief — "R. Apx. ____."

Exhibit 1

A post card mailed to the Chief Judge at his home, dated April 5, 1962, which reads as follows:

"Fixing

"Why did you bawl out a girl clerk Jeanette Burton

"When [Chief Clerk] Starkloff and [Judge] Lamden are to blame?

"Starkloff lies on fellow employees [sic] and plays favorites in petty politics.

"Check yourself, if you want the truth" (R. Apx. 1).

Exhibit 2

An envelope postmarked June 19, 1962, bearing a purported return address of "Chief Judge Starkloff" and sent by special delivery mail to the actual Chief Judge, at his home, but with the words "Assistant Clerk" appended after his name, was described at the hearing of October 29, 1964 (HT. I 16-17) as:

"... a directional sign ... amended by certain handwriting and handprinting to read 'The Traffic Court of' and inserted in block printing was the word 'Harrington' stricken out so it reads, 'The Traffic Court of Harrington (stricken out) Mr. Starkloff.' Added, 'Soon to be located elsewhere, we hope.' Then in brackets, 'The whole town is talking about the' — inscription on here. Down at the bottom, it reads, 'To owner [order] of Mr. Starkloff. Printed by courtesy Police Department Printing Press. Available for commercial purposes, 1,000 for $19.98' " (R. Apx. 2 and 3).

Exhibit 5

An envelope postmarked August 27, 1962, addressed to the Chief Judge and containing a mimeographed letter concerning a softball game between employees of the Municipal Court and the Baltimore City Police Department, is adulterated in handprinting as follows:

a. The words "Strange things are happening here." are handprinted with an arrow directing the reader from them to the mimeographed words "Municipal Court of Baltimore City."

b. The words "Printed on State of Md. stationary [sic] paid for by taxpayers mimeographed in probation dept by State employees on State time using the name of State agency."

c. The mimeographed word "beer" is circled and these words added at the end of a line leading from the circle "John Hull [an employee of the Municipal Court] has been absent on a 'tear' for a week."

d. An address is given this appendage: "3rd district click [sic] ok'd by Starkloff and Caskey, co." (R. Apx. 4).

Exhibit 8

Envelope addressed to the Chief Judge, postmarked March 24, 1963, contains the following "message":

"cause — 13,000 warrants are foisted on the public by mail all at one time. All because goofy Starkloff and Wanda [a supervisory employee] save them up and do not know what the hell they are trying to do.

"effect — A bedlam of confusion is created on the public and the personnel of the court the phone calls of irate citizens and people swamping the court is a mess and a burden on everyone.

"Solution — Over a period of time periodically several thousand should be mailed out now and then

"Central Records" (R. Apx. 5).

Exhibit 9

An envelope, postmarked March 31, 1963, addressed to the Chief Judge, bears a paper which reads as follows:

"Karloff's Munisimple Court

"You are criticized because deaf clerk Karloff is a 'round peg in a square hole.' He is unqualified and ignorant. That gives you trouble with the PRESS, PUBLIC, AND EMPLOYES [sic].

"Let him tell you what to do if you want to wind up behind the 8 ball" (R. Apx. 5).

Exhibit 10

An envelope addressed to the Chief Judge, postmarked April 2, 1963, and containing the following:

"Dear Bart.

"Starkloffs boo-boos are fast turning the Press and the Governor against you.

"How is it that in the Central Police Station Directory there is *no separation* between

"T. Barton Harrington Chief Judge

"Edward Starkloff Chief Clerk" (R. Apx. 6).

Exhibit 11

A post card, addressed to the Chief Judge at his home, postmarked July 11, 1962, reads:

"Dear Bart

"Just a friendly anonymous tip so it won't get back to where it came from.

"Upon finishing my court last week, it was found that clerks et al, have been promisciously [sic] securing driving records over the telefax machine at the

front window for liquor board inspectors, politicians, and friends, ect. [sic] also selling them.

"No one, neither personnel, nor judges not sitting should commit this abuse. The Chief clerk and deputy clerks are not immune, to this temptation according to past performance.

"NO MEMBER OF THE PERSONNEL SHOULD GET RECORDS ON THE TELEFAX MACHINE WITHOUT AN ORDER FROM THE JUDGE 'SITTING," AND ONLY THEN FOR A CASE PENDING IN COURT" (R. Apx. 7).

Exhibit 12

A post card, addressed to the Chief Judge at his home, postmarked August 30, 1962, reads:

"Sir

"Starkloff's Municipal Court Softball Club next time will have you as umpire. Don't forget to bring 'your little black cap.' Next game the Judges and Detectives can practice a little collusion. Why not a Municipal Court Pleasure Club or maybe a Municipal Court Democratic Club?

"You've got [Judge] Hammerman the playboy, why not amend it to the Municipal Court Screwball's Club, what with Kolarik and Gleason [two clerks] and Karloff.

"Why are all the employees leaving. The turnover is not due to you. It must be Karloff. But then, you're his assistant!" (R. Apx. 7).

Exhibit 15

An envelope, postmarked December 4, 1961, and addressed to the Chief Judge, with a typewritten enclosure, dated the previous day, reading as follows:

"Dear Judge Harrington:

"I feel that you are doing a good job, but I gave Starkloff a summons to re-set for my client. He failed to do so and a warrant went out for my client's arrest.

"I'm not complaining about the inefficiency, but the point is—

"*IT IS DISGRACEFUL* TO SEE PICTURES OF POLITICAL AFFAIRS, AND AUTOGRAPHED PICTURES OF THE GOVERNOR, PCTURES OF COGGINS-O'MALLEY, ECT. [sic] IN THE OFFICE OF AN EMPLOYEE OF THE STATE OF MD.

"IT IS A STATE OFFICE — NOT A 'PRIVATE' PERSONAL OFFICE FOR HIM TO OSTENTACIOUSLY [sic] SHOW A LUST FOR INFLUENCE AND POLITICAL POWER.

"This is the cheapest kind of a show of petty politics. The photos should come down!

"It would be wise for you to correct this matter. Keep up the good work, Judge" (R. Apx. 8).

Exhibit 16

An envelope, postmarked November 26, 1961, contains a newspaper clipping headlined "Reduced Fines Banned in Snow Emergencies." Emphasis has been added in the printed sentence: "With the dissolution of magistrates' courts, *Edward S. Starkloff, chief clerk of the new Municipal Court, appealed to the attorney general's office for a ruling.*" To the printed words so emphasized, an arrow is drawn with the handwritten words "Harrington works there too!" Adjacent to the article is an advertisement for an exterminator. The words "Roaches, Rodents, Bedbugs, Etc" have also been underscored in ink and beneath the ad are the handprinted words "Harrington is Starkloff's OFFICE BOY?" (R. Apx. 9).

Exhibit 17

A cartoon which the Commissioner of Personnel found was prepared by Appellant, as it appeared in a tabloid newspaper publication on July 9, 1964, is set forth in the Appendix (R. Apx. 10).

Only the reproductions of these "pointed, but earnest requests to the *bureau chief*, for changes in his operating procedures" (Pet. p. 21, Emphasis supplied) do justice to their malevolence.

When it was discovered that Petitioner was the author of these various communications, he was suspended from duty on July 17, 1964, and formally charged with violation of the rules of the merit system of the State of Maryland as established in Maryland Code Article 64A (Annotated Code of Maryland, Volume 5, 1964 Replacement Volume, p. 579 *et seq.*, 1967 Cumulative Supplement, p. 193 *et seq.*). A hearing was had before the Commissioner of Personnel on October 29, 1964. At that point Petitioner was represented by counsel who was new to the case, his previous counsel having withdrawn. Newly-employed counsel requested a postponement of the hearing but, because the State law required a hearing within 90 days from the formal charges (Annotated Code of Maryland, Article 64A, Section 33) and practically all of that period had lapsed by previous postponements granted at the request of Petitioner, the Commissioner of Personnel was constrained to go forward, and Petitioner's new counsel declined to participate. Petitioner absented himself from the hearing and the proceedings were had without his presence or that of his counsel.

On November 4, 1964, the Commissioner of Personnel filed a written decision (E. 26-31), in which he found that the Petitioner was the author of the anonymous communications and should be dismissed from State service. From this decision an appeal was taken pursuant to Maryland's Administrative Procedure Act (Annotated Code of Maryland, 1965 Replacement Volume, Article 41, Section 255, p. 233). The appellate court (Baltimore City Court, which

has *nisi prius* standing in the State of Maryland) remanded the case, concluding as follows:

> ". . . The Court does not feel the Appellant was afforded his right to a full and complete hearing in that his new counsel was unfamiliar with the facts and Appellant himself was not present to testify. This determination is in no way a reflection against the judgment of the Commissioner as he was under an obligation to proceed with the hearing before the expiration of the 90 day limit set forth in the statute."

Prior to the supplementary hearing held by the Commissioner of Personnel on June 8-10, 1965, counsel for Petitioner and the Municipal Court entered into a procedural agreement for the hearing (E. 32-33), pursuant to which witnesses on behalf of the Municipal Court who had testified at the hearing of October 29, 1964, were cross-examined by Petitioner's counsel; witnesses, including the Petitioner himself, were produced in his behalf; and rebuttal testimony was offered by the Municipal Court. Most, if not all, of this testimony related to the authorship of certain anonymous writings sent to the Chief Judge of the Municipal Court.

On June 29, 1965, the Commissioner of Personnel entered a "Supplemental Order" (E. 31-38), in which he again found that Petitioner was the author of the anonymous communications referred to in the charges and specifications and directed that Petitioner's services be terminated effective on the date of his suspension (E. 38).

A second appeal, by Petitioner's fifth counsel, was entered to the Baltimore City Court from this decision of the Commissioner of Personnel. The petition (E. 19-21), filed pursuant to Maryland Rule B 2 e, set forth a number of reasons for the appeal, which shifted, blended and merged into 14 main contentions presented at the hearing of the

second appeal (E. 1-2). These were accompanied by a flat concession that "if the record stands as filed there is sufficient evidence of a substantial nature to support the findings of the State Commissioner of Personnel" (E. 1).

Following argument by counsel for Petitioner and counsel for the Respondents, the court, on March 29, 1966, filed a memorandum opinion in which each of Petitioner's contentions was carefully considered and rejected (E. 1-18). The appeal to the Court of Appeals of Maryland was entered on May 2, 1966.

SUMMARY OF ARGUMENT

It is the position of the State of Maryland that Petitioner was given full and adequate opportunity to argue all matters in his defense through two administrative hearings and two appeals to *nisi prius* courts from the decisions of the Commissioner of Personnel and to present and argue every point of law available to him. The dismissal of this case by the Court of Appeals because the appeal to it, after the second appeal at *nisi prius* level, was filed later than 30 days from the entry of the judgment appealed from, in violation of the Maryland Rules, is in accord with the long-standing practice of the court. Any novelty in this procedure is only due to the fact that this is the first time that any appellant has committed the error of Petitioner in this case. The application of the 30-day rule to administrative appeals, as was done in this case, is an entirely proper application consistent with the position of the Court of Appeals in all other cases.

In any event, the Petitioner presents to this Court no ruling by any court of the State of Maryland which determines a federal question not previously determined by this Court or one which has been decided probably not in accord with the previous decisions of this Court.

ARGUMENT

I.

THE DISMISSAL OF PETITIONER'S APPEAL BY THE COURT OF APPEALS OF MARYLAND WAS BASED UPON AN ADEQUATE STATE GROUND.

Rule 812 of the Maryland Rules of Practice and Procedure[1] provides:

> "a. Whenever an appeal to this Court or an application to this Court for a writ of certiorari is permitted by law, the order for appeal or the application for a writ of certiorari shall be filed within thirty days from the date of the judgment appealed from except (i) as provided in section b of this Rule[2] and (ii) in the case of an application for a writ of certiorari to the Court of Special Appeals, which shall be filed within 30 days from the date of the mandate of the Court of Special Appeals."

This rule, passed in 1957, made uniform the time for taking appeals in the State of Maryland and it, like its predecessors, has been considered mandatory and strictly applied by the Court of Appeals. *Riviere v. Quinlan*, 210 Md. 76, 122 A. 2d 332; *Watkins v. Barnes*, 203 Md. 518, 102 A. 2d 295; *Kennedy v. Foley*, 240 Md. 615, 214 A. 2d 815; *Merlands Club, Inc. v. Messall*, 238 Md. 359, 208 A. 2d 687; *Coleman v. State*, 231 Md. 220, 189 A. 2d 616.

As with any rule, the point from which the time begins to run may differ in individual cases. Thus, the Court of

---

[1] These rules are officially referred to as the "Maryland Rules", printed in Volume 9B of the Annotated Code of Maryland (1963 Replacement Volume, 1967 Cumulative Supplement). They are promulgated by the Court of Appeals of Maryland and drafted by a standing committee of the Bar. They have the force of law until rescinded, changed or modified legislatively or by the Court of Appeals. Maryland Constitution, Article IV, Sections 18 and 18A.

[2] The first exception (reference to sec. b) to the rule indicated in the text quoted above has to do with the trial of issues from an Orphans' Court heard in a law court and is immaterial to the consideration of the present case.

Appeals has decided that an appeal from an order admitting a will to probate must be taken within 30 days after the date of the order rather than some later date involved in the proceedings of administration (*In re Wilson*, 135 Md. 195, 108 Atl. 797); that the time for appeal is measured from the entry of a judgment or decree regardless of the revisory power of the court entering the same under Maryland Rules 625 and 690 for the period of 30 days after the entry and even though the lower court might effect a revision after the expiration of 30 days based upon a petition filed within that time (*Monumental Eng. v. Simon*, 221 Md. 548, 158 A. 2d 471; *Lancaster v. Gardiner*, 225 Md. 260, 170 A. 2d 181); that in an equity case the time for appeal is measured from the date of the order or decree signed by the chancellor rather than from the date of any previous oral opinion expressed from the bench (*Kennedy v. Foley*, 240 Md. 615, 214 A. 2d 815); that on issues from an Orphans' Court tried in a law court an appeal is allowed from the factual determination of the law court. (*Syfer v. Dolby*, 182 Md. 139, 32 A. 2d 529.)

Generally, the right of appeal is limited to cases in which the lower court has entered a final judgment or made a final determination of an issue before it. Article 5, Section 1, Annotated Code of Maryland (1957 Edition). The determination of what is a final order was in this case necessarily a judgment for counsel inasmuch as the Court of Appeals had not previously specifically ruled on the particular point. However, it should have been clear to counsel from the applicable rules that the entry of the order affirming the Commissioner of Personnel was final in this case without any intervening *nisi* judgment.

Under Maryland's Administrative Procedure Act (Article 41, Sections 241-256, Annotated Code of Maryland, 1965 Replacement Volume), the source of appellate jurisdiction from *nisi prius* level in the present case, it is provided

(Section 255, subsection (f)) that the appeal shall be heard by the court without a jury and (subsection (g)) that "the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced" because of infirmities in the administrative findings. An appeal to the Court of Appeals of Maryland is provided in Section 256 in the following language:

> "An aggrieved party may secure a review of any final judgment of the circuit court or Baltimore City Court, as the case may be, under this subtitle by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided for appeals from law courts in other civil cases. . . ."

Under Maryland Rule B, regulating the proceedings of administrative appeals through courts at the *nisi prius* level, the power of the lower court is again expressly limited to the affirmance, reversal or modification, remanding or dismissal of the appeal as otherwise provided by law. Maryland Rule 564, which provides for the entry of a judgment *nisi* when an action *at law* is tried upon the facts by the court, is expressly applicable to cases "at law". Each section of the Maryland Rules is broken down into rules of general applicability to both law and equity courts, rules applicable to law courts only and rules applicable only to equity courts. But it has been held in Maryland on numerous occasions that a court exercising appellate jurisdiction over administrative determinations exercises a special jurisdiction and not its normal jurisdiction and the proceedings before it are of an extraordinary nature not governed by the standard rules. *Swann v. M. & C. of Cumberland*, 8 Gill 150; *Margraff v. Cunningham*, 57 Md. 585; *Johnson v. Board of Zoning Appeals*, 196 Md. 400,

76 A. 2d 736; *Md. Pharmacy Board v. Peco*, 234 Md. 200, 198 A. 2d 273; *Hart v. Comm. of Motor Vehicles*, 226 Md. 584, 174 A. 2d 725. In the Peco case, the Court of Appeals held that Maryland Code Article 5, Section 1, the legislative authorization for appeals to the Court of Appeals from final judgment of a court of law in any civil suit or action, does not apply to law courts entertaining administrative appeals. The court held, in accord with a long line of previous decisions, that the right of appeal in such cases is determined by the Administrative Procedure Act.

Even if the status of administrative appeals were otherwise unknown to Petitioner or his counsel, existence of a rule governing administrative agency appeals (Rule B, Chapter 1100, "Special Proceedings", Maryland Rules) apart from "law" Rules should be as much indication as is necessary to teach the distinction. Petitioner had, in fact, proceeded under Rule "B" in the Baltimore City Court on two occasions in this case and it is most difficult to grasp the materiality of his present contention, i.e., that he did not comprehend its exclusive applicability. Indicative of the fact that this has proved no pitfall for other litigants and practitioners is that, despite Maryland's long history of appeals from review of the actions of administrative agencies, the error committed by Petitioner[3] has not previously occurred.

It is claimed by Petitioner that the error in this case was that of the clerk of the court but, in fact, the error

[3] We use Petitioner's phraseology without intending to do service to his vaguely and cautiously stated inference that he was in fact deceived by the clerk's entry. Questions as to such a factual error could only be decided by testimony under oath should it be determined that even such an error could extend the time for appeal. Although the Court of Appeals treated the case assuming the error was induced, the basic question before it and before this Court is the regularity of Maryland's thirty day appeal rule as applied to administrative appeals and to this case.

was the Petitioner's and he is not privileged to rely upon the misconception of a layman in the clerk's office. The Baltimore City Court, the *nisi prius* court which first reviewed the administrative findings, is ordinarily a court of law but has certain exclusive appellate jurisdiction under Maryland Constitution, Article IV, Section 28. At best, the error of the clerk is properly attributable to this confusion of his duties in regard to the multiple functions of the court and is not indicative of any general practice which could amount to the most informal interpretation of the practice in Maryland on administrative appeals.

The error of Petitioner is attributable only to him and was admitted in the Court of Appeals at the time of argument. A copy of the Opinion and Order of the Baltimore City Court affirming the administrative action was received by Petitioner's counsel promptly after its entry on March 29, 1966. This could not be understood as anything other than the decision, the judgment of the court under Maryland Rule B12 and Maryland Code, Article 41, Section 255(g). From that point on Petitioner was charged with knowledge of the rules governing the time for appeal. If the clerk had failed to make any entry or had entered only a judgment *nisi* and never entered a final judgment, the circumstances would not be altered, for Petitioner's knowledge of the actual facts and his obligation to recognize the status of the law under which he was proceeding cannot be wished away. As stated by the Court of Appeals in its opinion in accord with *Baltimore Luggage Co., v. Ligon*, 208 Md. 406, 118 A. 2d 665 (1955), the parties "were charged with knowledge that the entry of the judgment *nisi* had 'no place' in the case and that a final judgment was, in fact, entered on the court records" (P. Apx. 5).

In light of the previous Maryland law, the clarity of the pre-existing Maryland Rules and the circumstances of

the present case, Petitioner's assertions that the Maryland Court of Appeals "neatly ruled", sought its own "good fortune" (Petition, p. 10), and committed judicial "sleight of hand" (Petition, pp. 23, 24) are not only contemptibly unfair to the Court of Appeals and unworthy of expression by a member of the Maryland Bar but even exceed in nonsensical properties the assertion that Petitioner was "hoisted out of court on the Baltimore City Court clerk's petard" (Petition, p. 9). Any "hoisting" of this petitioner was accomplished, with literal fidelity to the Shakespearean source, "by his own petar".[4]

It is an incredible circumstance that in support of his assertions as to novelty of procedure, "sleight of hand" and neat rulings, Petitioner cites no Maryland cases. The entire body of Maryland law is dismissed in the sentence: "No Maryland cases are cited" (Petition, p. 26).

II.

THERE IS NO QUESTION PRESENTED PROPER FOR CERTIORARI TREATMENT AS TO FREEDOM OF SPEECH, REGARDLESS OF THE STATE COURT DECISION.

Petitioner's efforts to have this Court cure his procedural neglect in Maryland is based upon the flat statement that his utterances were *absolutely* privileged because he was an employee of the State and therefore immune from discipline by his employer for *any* activities involving speech. This Court has twice affirmed the direct proposition that freedom of speech does not require a governmental employer to suffer the presence of a politically antagonistic employee on its payroll. *Bailey v. Richardson*, 341 U.S. 918, 95 L. Ed. 1352, affirming, *per curiam*, the decision of the Court of Appeals for the District of Columbia Circuit at 182 F. 2d 46, 86 U.S. App. D.C. 248; and *Washington v. McGrath*, 341 U.S. 923, 95 L. Ed.

[4] Hamlet, Act III, Scene 4, line 206.

1356, affirming, *per curiam*, the decision of the Court of Appeals for the District of Columbia Circuit at 182 F. 2d 375, 86 U.S. App. D.C. 343. This Court held in *United Public Workers v. Mitchell*, 330 U.S. 75, 91 L. Ed. 754, that the prohibitions of the Hatch Act forbidding political activities by federal employees on their off-duty hours and making such activities cause for dismissal from civil service did not abridge freedom of speech. The State loyalty oath cases are further in point as to the absence of the absolute rule claimed by Petitioner. *Baggett v. Bullitt*, 377 U.S. 360, 12 L. Ed. 2d 377; *Gerende v. Board*, 341 U.S. 56, 95 L. Ed. 745. It is significant that Petitioner implores this Court's indulgence not on the basis that the result of the Maryland procedure is probably not in accord with the decisions of this Court but on the pretense that this Court has not expressed a position on the ability of government, however qualified, to limit freedom of speech in the absolute sense for its own protection. Petitioner resorts to the libel cases (*Garrison v. Louisiana*, 379 U.S. 64, 13 L. Ed. 2d 125) and to an opinion on the use of state authority to inhibit freedom of expression in areas unconnected with employment (*Thorpe v. Housing Authority*, 385 U.S. 967, 17 L. Ed. 2d 432) and fails to acknowledge the pertinent decisions. The refusal of this Court to grant certiorari in *Melfa v. Davis* (October Term, 1965, No. 1275, 384 U.S. 1001) might have been cited inasmuch as the petitioner there was a co-worker of the Petitioner here and feinted at the same free speech proposition, through the same advocate. (The *Melfa* petition was filed late in this Court.)

CONCLUSION

Petitioner champions no cause worthy of consideration. Free speech in the sense of public criticism, public debate, an expression of ideas, an attempt to win approval of a philosophy is foreign to this matter. What Petitioner seeks

is a constitutional *deus ex machina* to snatch him from the fate his own vices have provided. He is not sued for libel nor discriminated against for conduct foreign to his employment. He was justly disciplined for committing acts detrimental to his employer under the provisions of Maryland's Civil Service Law. He equated his judicial employers with bedbugs and roaches, demeaned the office of Chief Judge by asserting that that officer was in reality the office boy to his own clerk, accused the judges of being in collusion with detectives, referred to an associate judge as a playboy, referred to his court as "Munisimple" (rather than Municipal), all in anonymous letters and postcards addressed to the Chief Judge at his home and office. He prepared and participated in the publication of a cartoon degrading his court. All of this was designed to harass his employer and it was found to have had that effect. Having been stripped of his cloak of anonymity, he now thrashes about for constitutional cover.

Even had the question been properly presented and decided in the Court of Appeals, the issues sought to be raised under the facts of this case are of no moment and unworthy of consideration by this Court. In the present posture of the case the writ sought would be improper under this Court's rules.

The Petition should be dismissed.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,

THOMAS A. GARLAND,
Assistant Attorney General
of Maryland,
1200 One Charles Center,
Baltimore, Maryland 21201,
For Respondents

- FIXING -

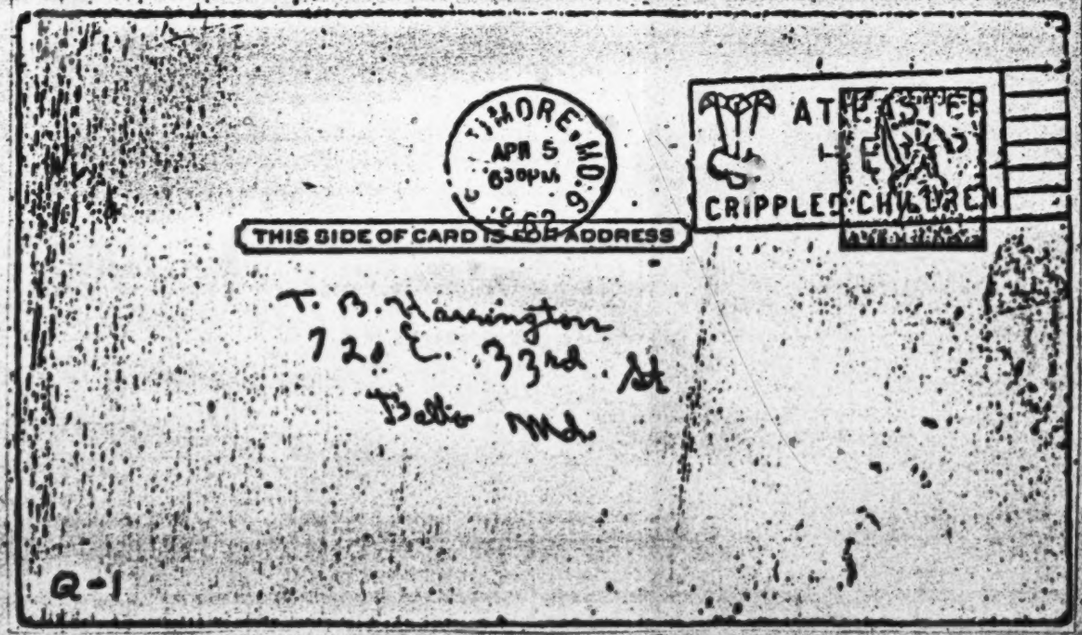
MUCT #1

Why did you haul out a girl clerk Jeanelle Burton
When Starkloff and Landin are to blame.?

Starkloff lies on fellow employees and
plays favorites in petty politics.

Check yourself, if you want the truth.

Q-1



T. B. Harrington
720 E. 33rd St
Balto Md.

Q-1

CHIEF JUDGE STARKLOFF
of Municipal Court Personnel
Halloway, Fayette
central Police Station
Balto. Md.

POSTAGE DUE 6 CENTS

SPECIAL DELIVERY

J. Barton Warrington, Assistant Clerk
720 E. 33rd Street
Baltimore, Md.

SPECIAL

SPECIAL DELIVERY

Q-2

Q-2A

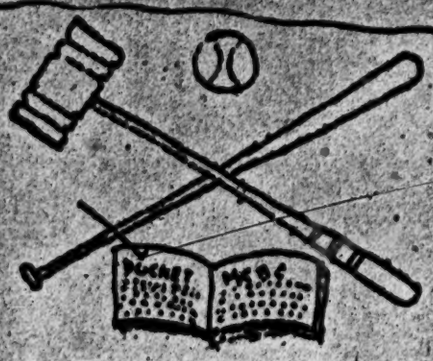
THE TRAFFIC COURT OF ~~HARRINGTON~~ MR. STARKLOFF

SOON TO BE LOCATED ELSEWHERE WE HOPE!

Q-2 A

STRANGE THINGS ARE HAPPENING HERE!

MUNICIPAL COURT
OF BALTIMORE CITY
SOFTBALL CLUB, INC.
Baltimore 2, Md.



Robert I. H. Hammersen
President

John J. Kolarik
Manager

Phone: 539-8759

"Justice and Fair Play"

PRINTED ON STATE OF MD. STATIONERY. PAID FOR BY TAXPAYERS. TYPEWRITTEN IN PROBATION DEPT. BY STATE EMPLOYEE ON STATE TIME USING THE NAME OF STATE AGENCY.

August 11th, 1962

MD. SEAL

Dear Member:

All of you who were at the practice session of the softball team on Tuesday will realize that we must have another practice if we are to make any kind of showing at all against the Detective Bureau. Igitur, we have scheduled a practice game against Vic Dahl's all-Stars to be played at the Dumbarton Elementary School field, on Tuesday, August 14th, at 6:30 p.m. For directions to the field, see the sketch below.

The game against the Detective Bureau will be played on Thursday, August 16th, 6:30 p.m., at the Morgan State College Diamond, Cold Spring Lane and Hillen Road. After the game, there will be a little get-together of the team members, their wives and children, girlfriends and fans at the Holiday House Rathskeller, 6427 Harford Road (at Pinewood Avenue; parking lot and entrance at the rear). Beer, sodas, potato chips and pretzels will be served. This will cost each player $1.50. Any profits from this affair will go towards some equipment for the team.

Please contact me as soon as possible about attending the party, so arrangements can be made with the Holiday House at to the number of people to expect.

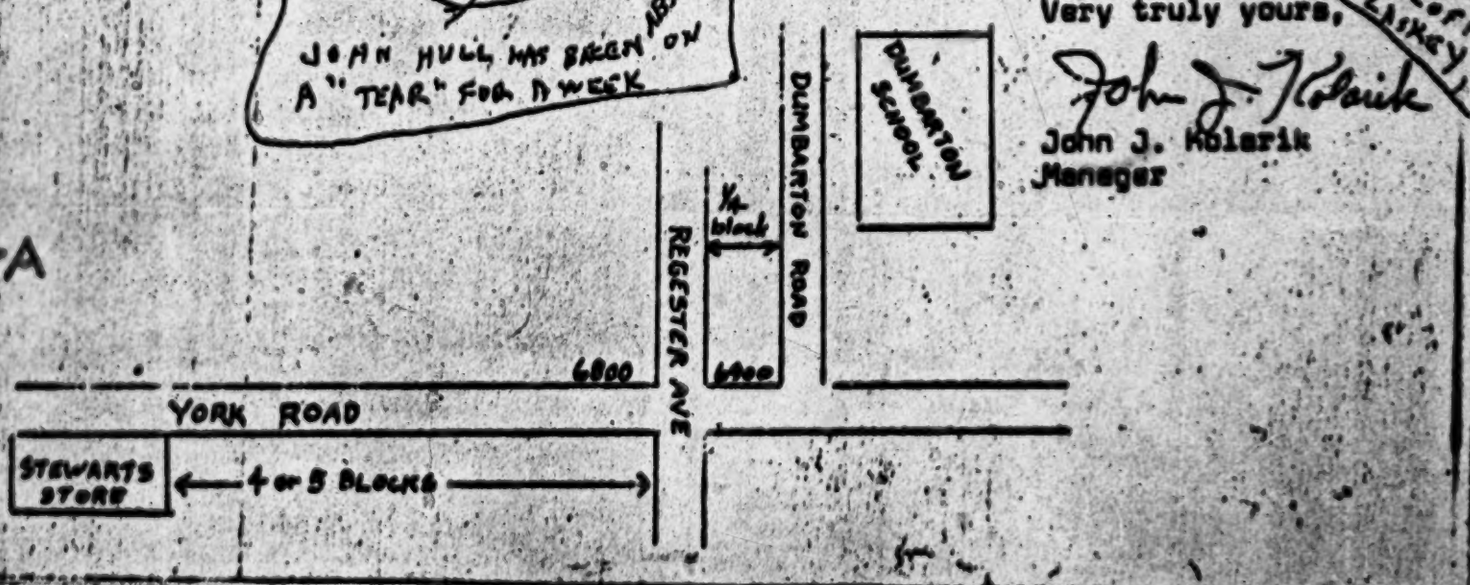
Also, please be on time for the games, at least 15 minutes ahead of playing time.

3RD DISTRICT CLICK OK'D BY STANKOFF AND LASKEY

JOHN HULL HAS BEEN ABSENT ON A "TEAR" FOR A WEEK

Very truly yours,

John J. Kolarik
Manager



Q-5-A

P. Apx. 4

MUCT Ex. #8

Cause - 13,000 warrants are issued by the public by mail all at one time, all because goofy Starkoff and Wanda have them up and do not know what the hell they are trying to do.

effect - A bedlam of confusion is created in the Public and the personnel of the court. the phone calls of irate citizens and people swamping the court in a mess and a burden on everyone.

solution - Power a period of time periodically several thousand should be mailed out now and then.

CENTRAL RECORDS

MUCT Ex. #9

KARLOFF'S MUNISIMPLE COURT

MUCT Ex. #9A

YOU ARE CRITICIZED BECAUSE DEAF CLERK KARLOFF IS A "ROUND PEG IN A SQUARE HOLE!" HE IS UNQUALIFIED AND IGNORANT. THAT GIVES YOU TROUBLE WITH THE PRESS, PUBLIC, AND EMPLOYES.

LET HIM TELL YOU WHAT TO DO IF YOU WANT TO WIND UP BEHIND THE 8 BALL

Q-9-A

MUCT Ex. #10

BALTIMORE 20 MD
APR 30 3:30PM
1963

LAW DAY U.S.A.
FREEDOM UNDER THE
MAY 1

5¢ U.S. POSTAGE

T. B. Harrington
Municipal Court
Fallsway and Fayette
City

Q-10

MUCT Ex. #10A

Dear Bart:

Starkloffs boo-boos are fast turning the Press and the Governor against you.

How is it that in the Central Police Station directory there is no separation between

T. BRETON HARRINGTON CHIEF JUDGE
EDWARD STARKLOFF CHIEF CLERK

Q-10-A

MUCT Ex. # 11

Dear Bart:

Just a friendly anonymous tip so it won't get back to where it came from...

Upon finishing my court last week, it was found that clerks et al, have been promiscuously securing driving records over the telefax machine at the front window for liquor board inspectors, politicians, and friends; ect. also selling them.

No one, neither personnel, nor judges not sitting should commit this abuse. The Chief clerk and deputy clerks are not immune, to this temptation according to past performance.

NO MEMBER OF THE PERSONNEL SHOULD GET RECORDS ON THE TELEFAX MACHINE WITHOUT AN ORDER FROM THE JUDGE "SITTING." AND ONLY THEN FOR A CASE PENDING IN COURT.

Q-11

MUCT Ex. #12

SIR:

Starkloff's Municipal Court Softball Club next time will have you as umpire. Don't forget to bring "your little black cap." Next game the Judges and Detectives can practice a little collusion.

Why not a Municipal Court Pleasure Club or maybe a Municipal Court Democratic Club?

You've got Hammerman the playboy, why not amend it to the Municipal Court Screwball's Club, what with Kolarik and Gleason and Karloff.

Why are all the employees leaving. The turnover is not due to you. It must be Karloff. But then, you're his assistant!

Q-12

Q-15

MUCT E. #15

Chief Judge
T. Barton Harrington
Fallsway & Fayette
Central Police Bldg.
City

PERSONAL

MUCT E. #15A

12-3-61

Dear Judge Harrington;

I feel that you are doing a good job, but I gave Starkloff a summons to re-set for my client. He failed to do so and a warrant went out for my client's arrest.

I'm not complaining about the inefficiency, but the point is ---

IT IS DISGRACEFUL TO SEE PICTURES OF POLITICAL AFFAIRS, AND AUTOGRAPHED PICTURES OF THE GOVERNOR, PICTURES OF COGGINS-O'MALLEY, ECT. IN THE OFFICE OF AN EMPLOYEE OF THE STATE OF MD.

IT IS A STATE OFFICE --- NOT A "PRIVATE" PERSONAL OFFICE FOR HIM TO OSTENTACIOUSLY SHOW A LUST FOR INFLUENCE AND POLITICAL POWER.

This is the cheapest kind of a show of petty politics. The photos should come down! It would be wise for you to correct this matter. Keep up the good work, Judge.

% Q-15-A

MUCT E. #16A

(Harrington worth these too!

$25 Or Nothing

Reduced Fines Banned In Snow Emergencies

Q-11-S.

The attorney general's office has called the tune for motorists facing fines for violating snow emergency laws—it's all or nothing at all.

Ending a long verbal snowball battle between Paul A. Dorf, former Traffic Court magistrate, and Traffic Director Henry A. Barnes, Deputy Atty. Gen. Joseph F. Kaufman ruled Traffic Court judges could not impose reduced fines for snow emergency law violations.

KAUFMAN noted the law prescribes a flat $25 violation fee and said judges could either impose the full fee, or suspend it.

Dorf, as Traffic Court magistrate, never imposed the [illegible] fine. He contended magistrates, like Criminal Court judges, could reduce a fine.

Barnes complained frantly last year that magistrates were "not complying with the law" by setting fines at $5.25.

With the dissolution of magistrates' courts, Edward S. Starkloff, chief clerk of the new Municipal Court, appealed to the attorney general's office for a ruling.

Q-16-A

This Sun

Q-16

Personal

T. BURTON HARRINGTON-PH. D.
Chief Judge Municipal Court
Central Police Station
Fallsway - Fayette
Baltimore, Md.

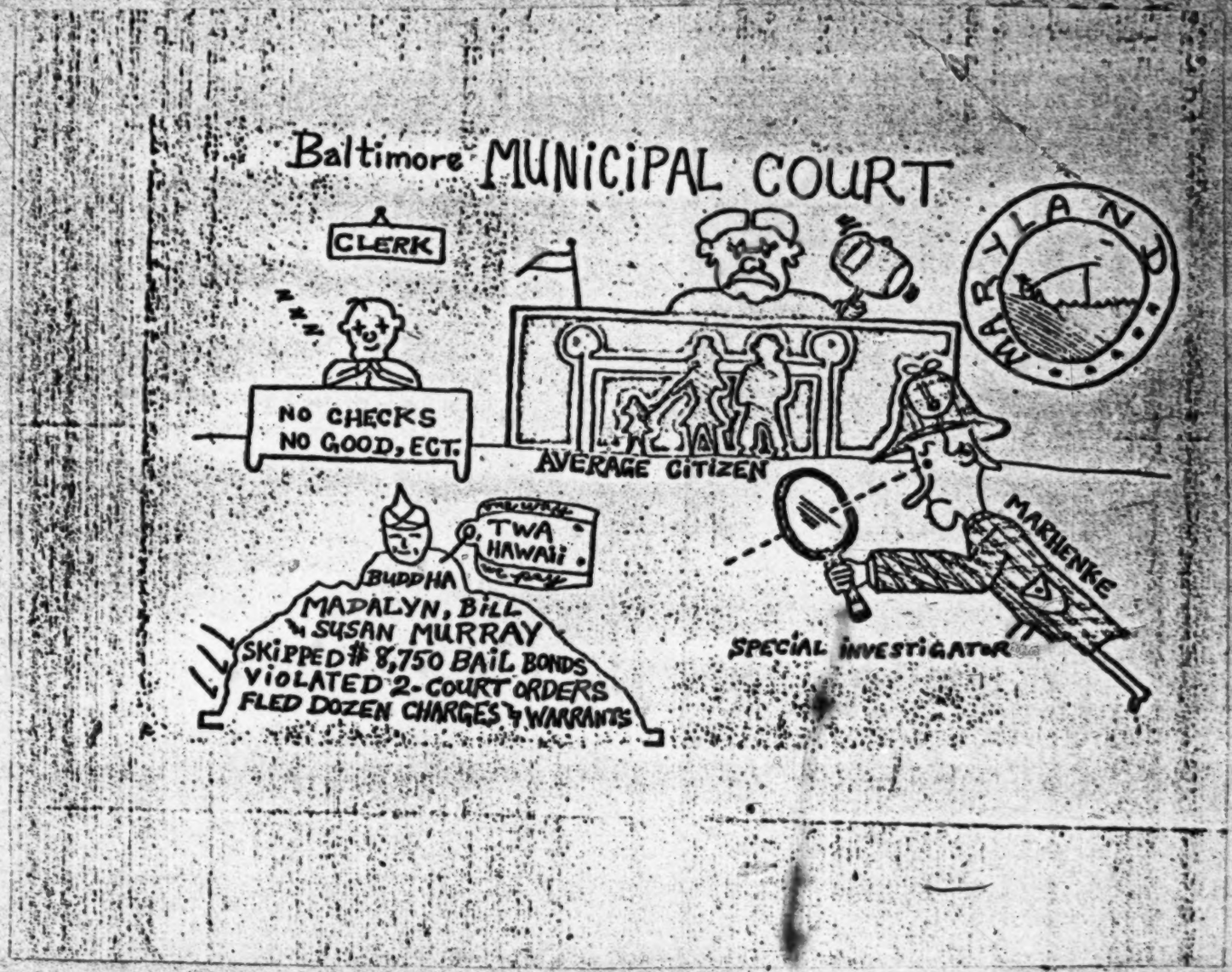
MUCT. E. #16

FIGHT
SUPPORT
TB ASSOC

COACHES
PIED PIPER

HARRINGTON is STARKLOFF'S OFFICE BOY?

R. Apx.



CERTIORARI DENIED